CROSS & VAIL

Attorneys at Law

Memorandum

Re: Animal Companions

To: Alex Associate

From: Jane Whitefield

The following story appeared in several newspapers throughout the country. The Colorado Association of Kennel Operators has asked the firm whether the described proposal makes sense from a legal perspective. I need a memo on this.

Colorado proposal would recognize pets as companions

Associated Press

DENVER - Several Colorado lawmakers are supporting legislation to elevate the status of cats and dogs from property to companions.

The measure would allow people in Colorado to sue veterinarians and animal abusers and seek damages for "loss of companionship," up to $100,000.

Colorado has more than 2 million dogs and cats in 1.6 million households. Current law classifies them as property, and pet owners can seek only "fair market value" in a lawsuit.

If passed, it would be the first such companionship law in the nation, said lawyer Josh Pazour.

A related ordinance, making pet owners guardians so pets will not be seen as property, was recently passed by the San Francisco Board of Supervisors. "We're really trying to get to the heart of trying to treat animals more humanely and promote guardianship," said Matt Gonzalez, the board's president and chief sponsor of the ordinance.

Rob Eshelman, an aide to Gonzalez, has said Boulder was the first city to make pet owners guardians, followed by others including Berkeley and West Hollywood in California and the state of Rhode Island.

The Colorado measure is opposed by the state Veterinary Medical Association, which contends the proposed changes would increase the cost of veterinary care.

"Veterinarians will have to pass on to consumers the increased costs of doing businesses, including time spent responding to frivolous lawsuits and additional diagnostic tests that will now be required to practice defensive medicine," the association said in a statement to its members.

Colorado already is among 14 states legally recognizing dogs and cats as beneficiaries and allowing people to leave money and property to their pets.

"If you can leave something to your animal, they're obviously a status beyond property," said state Rep. Mark Cloer, the chief House sponsor of the companionship measure.

Republican Gov. Bill Owens, who owns a springer spaniel named Hannah, would not say if he would sign such a bill into law if it passes. But he added: "Hannah is very much in favor" of the bill.

Memorandum

Re: Animal Companions

To: Alex Associate

From: Perry Paralegal

Un morceau de gateau.

DIAMOND v. CHAKRABARTY

447 U.S. 303
Supreme Court of the United States, 1980

BURGER, C.J.

We granted certiorari to determine whether a live, human-made micro-organism is patentable subject matter under 35 U.S.C. § 101.

I

In 1972, respondent Chakrabarty, a microbiologist, filed a patent application, assigned to the General Electric Co.. The application asserted 36 claims related to Chakrabarty's invention of "a bacterium from the genus Pseudomonas containing therein at least two stable energy-generating plasmids, each of said plasmids providing a separate hydrocarbon degradative pathway."[1] This

[1] Plasmids are hereditary units physically separate from the chromosomes of the cell. In prior research, Chakrabarty and an associate discovered that plasmids control the oil degradation abilities of certain bacteria. In particular, the two researchers discovered plasmids capable of degrading camphor and octane, two components of crude oil. In the work represented by the patent application at issue here, Chakrabarty discovered a process by which four different plasmids,

human-made, genetically engineered bacterium is capable of breaking down multiple components of crude oil. Because of this property, which is possessed by no naturally occurring bacteria, Chakrabarty's invention is believed to have significant value for the treatment of oil spills.[2]

Chakrabarty's patent claims were of three types: first, process claims for the method of producing the bacteria; second, claims for an inoculum comprised of a carrier material floating on water, such as straw, and the new bacteria; and third, claims to the bacteria themselves. The patent examiner allowed the claims falling into the first two categories, but rejected claims for the bacteria. His decision rested on two grounds: (1) that micro-organisms are "products of nature," and (2) that as living things they are not patentable subject matter under 35 U.S.C. § 101.

Chakrabarty appealed the rejection of these claims to the Patent Office Board of Appeals, and the Board affirmed the Examiner on the second ground.[3] Relying on the legislative history of the 1930 Plant Patent Act, in which Congress extended patent protection to certain asexually reproduced plants, the Board concluded that § 101 was not intended to cover living things such as these laboratory created micro-organisms.

The Court of Customs and Patent Appeals, by a divided vote, reversed on the authority of its prior decision in In re Bergy, 563 F.2d 1031, 1038 (1977), which held that "the fact that microorganisms . . . are alive . . . [is] without legal significance" for purposes of the patent law. Subsequently, we granted the Acting Commissioner of Patents and Trademarks' petition for certiorari in *Bergy*, vacated the judgment, and remanded the case "for further consideration in light of Parker v. Flook, 437 U.S. 584 (1978)." The Court of Customs and Patent Appeals then vacated its judgment in *Chakrabarty* and consolidated the case with *Bergy* for reconsideration. After re-examining both cases in the light of our holding in *Flook*, that court, with one dissent, reaffirmed its earlier judgments. 596 F.2d 952 (1979).

The Commissioner of Patents and Trademarks again sought certiorari, and we granted the writ as to both *Bergy* and *Chakrabarty*. Since then, *Bergy* has been dismissed as moot, leaving only Chakrabarty for decision.

II

The Constitution grants Congress broad power to legislate to "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Art. I, § 8, cl. 8. The patent laws promote this progress by offering inventors exclusive rights for a limited period as an incentive for their inventiveness and research efforts. Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470, 480-481 (1974); Universal Oil Co. v. Globe Co., 322 U.S. 471, 484 (1944). The authority of Congress is exercised in the hope that "[t]he productive effort thereby fostered will have a positive effect on society through the

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capable of degrading four different oil components, could be transferred to and maintained stably in a single Pseudomonas bacterium, which itself has no capacity for degrading oil.

[2] At present, biological control of oil spills requires the use of a mixture of naturally occurring bacteria, each capable of degrading one component of the oil complex. In this way, oil is decomposed into simpler substances which can serve as food for aquatic life. However, for various reasons, only a portion of any such mixed culture survives to attack the oil spill. By breaking down multiple components of oil, Chakrabarty's micro-organism promises more efficient and rapid oil-spill control.

[3] The Board concluded that the new bacteria were not "products of nature," because Pseudomonas bacteria containing two or more different energy-generating plasmids are not naturally occurring.

introduction of new products and processes of manufacture into the economy, and the emanations by way of increased employment and better lives for our citizens." *Kewanee*, 416 U.S., at 480.

The question before us in this case is a narrow one of statutory interpretation requiring us to construe 35 U.S.C. § 101, which provides:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Specifically, we must determine whether respondent's micro-organism constitutes a "manufacture" or "composition of matter" within the meaning of the statute.

III

In cases of statutory construction we begin, of course, with the language of the statute. And "unless otherwise defined, words will be interpreted as taking their ordinary, contemporary common meaning." Perrin v. United States, 444 U.S. 37 (1979). We have also cautioned that courts "should not read into the patent laws limitations and conditions which the legislature has not expressed." United States v. Dubilier Condenser Corp., 289 U.S. 178, 199 (1933).

Guided by these canons of construction, this Court has read the term "manufacture" in § 101 in accordance with its dictionary definition to mean "the production of articles for use from raw or prepared materials by giving to these materials new forms, qualities, properties, or combinations, whether by hand-labor or by machinery." American Fruit Growers, Inc. v. Brogdex Co., 283 U.S. 1, 11 (1931). Similarly, "composition of matter" has been construed consistent with its common usage to include "all compositions of two or more substances and . . . all composite articles, whether they be the results of chemical union, or of mechanical mixture, or whether they be gases, fluids, powders or solids." Shell Development Co. v. Watson, 149 F. Supp. 279, 280 (D.C.1957) (citing 1 A. Deller, Walker on Patents § 14, p. 55 (1st ed. 1937)). In choosing such expansive terms as "manufacture" and "composition of matter," modified by the comprehensive "any," Congress plainly contemplated that the patent laws would be given wide scope.

The relevant legislative history also supports a broad construction. The Patent Act of 1793, authored by Thomas Jefferson, defined statutory subject matter as "any new and useful art, machine, manufacture, or composition of matter, or any new or useful improvement [thereof]." The Act embodied Jefferson's philosophy that "ingenuity should receive a liberal encouragement." 5 Writings of Thomas Jefferson 75-76 (Washington ed. 1871). Subsequent patent statutes in 1836, 1870, and 1874 employed this same broad language. In 1952, when the patent laws were recodified, Congress replaced the word "art" with "process," but otherwise left Jefferson's language intact. The Committee Reports accompanying the 1952 Act inform us that Congress intended statutory subject matter to "include anything under the sun that is made by man."

This is not to suggest that § 101 has no limits or that it embraces every discovery. The laws of nature, physical phenomena, and abstract ideas have been held not patentable. See Parker v. Flook, 437 U.S. 584 (1978); Gottschalk v. Benson, 409 U.S. 63, 67 (1972); Funk Brothers Seed Co. v. Kalo Inoculant Co., 333 U.S. 127, 130 (1948); O'Reilly v. Morse, 15 How. 62, 112-121 (1854); Le Roy v. Tatham, 14 How. 156, 175 (1853). Thus, a new mineral discovered in the earth or a new plant found in the wild is not patentable subject matter. Likewise, Einstein could not patent his celebrated law that $E=mc^2$; nor could Newton have patented the law of gravity. Such discoveries are "manifestations of . . . nature, free to all men and reserved exclusively to none." *Funk*, 333 U.S., at 130.

Judged in this light, respondent's micro-organism plainly qualifies as patentable subject matter. His claim is not to a hitherto unknown natural phenomenon, but to a nonnaturally occurring manufacture or composition of matter—a product of human ingenuity "having a distinctive name, character [and] use." Hartranft v. Wiegmann, 121 U.S. 609, 615 (1887). The point is underscored dramatically by comparison of the invention here with that in *Funk*. There, the patentee had discovered that there existed in nature certain species of root-nodule bacteria which did not exert a mutually inhibitive effect on each other. He used that discovery to produce a mixed culture capable of inoculating the seeds of leguminous plants. Concluding that the patentee had discovered "only some of the handiwork of nature," the Court ruled the product nonpatentable:

> Each of the species of root-nodule bacteria contained in the package infects the same group of leguminous plants which it always infected. No species acquires a different use. The combination of species produces no new bacteria, no change in the six species of bacteria, and no enlargement of the range of their utility. Each species has the same effect it always had. The bacteria perform in their natural way. Their use in combination does not improve in any way their natural functioning. They serve the ends nature originally provided and act quite independently of any effort of the patentee.

Here, by contrast, the patentee has produced a new bacterium with markedly different characteristics from any found in nature and one having the potential for significant utility. His discovery is not nature's handiwork, but his own; accordingly it is patentable subject matter under § 101. . . .

BENNIS v. MICHIGAN

516 U.S. 442
Supreme Court of the United States, 1996

Rehnquist, C.J.

Petitioner was a joint owner, with her husband, of an automobile in which her husband engaged in sexual activity with a prostitute. A Michigan court ordered the automobile forfeited as a public nuisance, with no offset for her interest, notwithstanding her lack of knowledge of her husband's activity. We hold that the Michigan court order did not offend the Due Process Clause of the Fourteenth Amendment or the Takings Clause of the Fifth Amendment.

Detroit police arrested John Bennis after observing him engaged in a sexual act with a prostitute in the automobile while it was parked on a Detroit city street. Bennis was convicted of gross indecency. The State then sued both Bennis and his wife, petitioner Tina B. Bennis, to have the car declared a public nuisance and abated as such under §§ 600.3801[2] and 600.3825 of Michigan's Compiled Laws.

Petitioner defended against the abatement of her interest in the car on the ground that, when she

[2] Any building, vehicle, boat, aircraft, or place used for the purpose of lewdness, assignation or prostitution or gambling, or used by, or kept for the use of prostitutes or other disorderly persons, . . . is declared a nuisance, . . . and all . . . nuisances shall be enjoined and abated as provided in this act and as provided in the court rules.

Any person or his or her servant, agent, or employee who owns, leases, conducts, or maintains any building, vehicle, or place used for any of the purposes or acts set forth in this section is guilty of a nuisance.

entrusted her husband to use the car, she did not know that he would use it to violate Michigan's indecency law. The Wayne County Circuit Court rejected this argument, declared the car a public nuisance, and ordered the car's abatement. In reaching this disposition, the trial court judge recognized the remedial discretion he had under Michigan's case law. He took into account the couple's ownership of "another automobile," so they would not be left "without transportation." He also mentioned his authority to order the payment of one-half of the sale proceeds, after the deduction of costs, to "the innocent co-title holder." He declined to order such a division of sale proceeds in this case because of the age and value of the car (an 11-year-old Pontiac sedan recently purchased by John and Tina Bennis for $600); he commented in this regard: "[T]here's practically nothing left minus costs in a situation such as this."

The Michigan Court of Appeals reversed, holding that regardless of the language of Michigan Compiled Law § 600.3815(2), Michigan Supreme Court precedent interpreting this section prevented the State from abating petitioner's interest absent proof that she knew to what end the car would be used. Alternatively, the intermediate appellate court ruled that the conduct in question did not qualify as a public nuisance because only one occurrence was shown and there was no evidence of payment for the sexual act.

The Michigan Supreme Court reversed the Court of Appeals and reinstated the abatement in its entirety. It concluded as a matter of state law that the episode in the *Bennis* vehicle was an abatable nuisance. Rejecting the Court of Appeals' interpretation of § 600.3815(2), the court then announced that, in order to abate an owner's interest in a vehicle, Michigan does not need to prove that the owner knew or agreed that her vehicle would be used in a manner proscribed by § 600.3801 when she entrusted it to another user. The court next addressed petitioner's federal constitutional challenges to the State's abatement scheme: The court assumed that petitioner did not know of or consent to the misuse of the Bennis car, and concluded in light of our decisions in Van Oster v. Kansas, 272 U.S. 465 (1926), and Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663 (1974), that Michigan's failure to provide an innocent-owner defense was "without constitutional consequence." The Michigan Supreme Court specifically noted that, in its view, an owner's interest may not be abated when "a vehicle is used without the owner's consent." Furthermore, the court confirmed the trial court's description of the nuisance abatement proceeding as an "equitable action," and considered it "critical" that the trial judge so comprehended the statute.

We granted certiorari in order to determine whether Michigan's abatement scheme has deprived petitioner of her interest in the forfeited car without due process, in violation of the Fourteenth Amendment, or has taken her interest for public use without compensation, in violation of the Fifth Amendment as incorporated by the Fourteenth Amendment. We affirm.

The gravamen of petitioner's due process claim is not that she was denied notice or an opportunity to contest the abatement of her car; she was accorded both. Rather, she claims she was entitled to contest the abatement by showing she did not know her husband would use it to violate Michigan's indecency law. But a long and unbroken line of cases holds that an owner's interest in property may be forfeited by reason of the use to which the property is put even though the owner did not know that it was to be put to such use.

Our earliest opinion to this effect is Justice Story's opinion for the Court in The Palmyra, 12 Wheat. 1 (1827). The *Palmyra*, which had been commissioned as a privateer by the King of Spain and had attacked a United States vessel, was captured by a United States warship and brought into Charleston, South Carolina, for adjudication. On the Government's appeal from the Circuit Court's acquittal of the vessel, it was contended by the owner that the vessel could not be forfeited until he

was convicted for the privateering. The Court rejected this contention, explaining: "The thing is here primarily considered as the offender, or rather the offence is attached primarily to the thing." In another admiralty forfeiture decision 17 years later, Justice Story wrote for the Court that in in rem admiralty proceedings "the acts of the master and crew . . . bind the interest of the owner of the ship, whether he be innocent or guilty; and he impliedly submits to whatever the law denounces as a forfeiture attached to the ship by reason of their unlawful or wanton wrongs." Harmony v. United States, 2 How. 210, 234.

In Dobbins's Distillery v. United States, 96 U.S. 395, 401 (1878), this Court upheld the forfeiture of property used by a lessee in fraudulently avoiding federal alcohol taxes, observing: "Cases often arise where the property of the owner is forfeited on account of the fraud, neglect, or misconduct of those intrusted with its possession, care, and custody, even when the owner is otherwise without fault . . . and it has always been held . . . that the acts of [the possessors] bind the interest of the owner . . . whether he be innocent or guilty."

In Van Oster v. Kansas, 272 U.S. 465 (1926), this Court upheld the forfeiture of a purchaser's interest in a car misused by the seller. Van Oster purchased an automobile from a dealer but agreed that the dealer might retain possession for use in its business. The dealer allowed an associate to use the automobile, and the associate used it for the illegal transportation of intoxicating liquor. The State brought a forfeiture action pursuant to a Kansas statute, and Van Oster defended on the ground that the transportation of the liquor in the car was without her knowledge or authority. This Court rejected Van Oster's claim:

> It is not unknown or indeed uncommon for the law to visit upon the owner of property the unpleasant consequences of the unauthorized action of one to whom he has entrusted it. Much of the jurisdiction in admiralty, so much of the statute and common law of liens as enables a mere bailee to subject the bailed property to a lien, the power of a vendor of chattels in possession to sell and convey good title to a stranger, are familiar examples. . . . They suggest that certain uses of property may be regarded as so undesirable that the owner surrenders his control at his peril. . . .
>
> It has long been settled that statutory forfeitures of property entrusted by the innocent owner or lienor to another who uses it in violation of the revenue laws of the United States is not a violation of the due process clause of the Fifth Amendment.

The *Van Oster* Court relied on J.W. Goldsmith, Jr.-Grant Co. v. United States, 254 U.S. 505 (1921), in which the Court upheld the forfeiture of a seller's interest in a car misused by the purchaser. The automobile was forfeited after the purchaser transported bootleg distilled spirits in it, and the selling dealership lost the title retained as security for unpaid purchase money. The Court discussed the arguments for and against allowing the forfeiture of the interest of an owner who was "without guilt," and concluded that "whether the reason for [the challenged forfeiture scheme] be artificial or real, it is too firmly fixed in the punitive and remedial jurisprudence of the country to be now displaced."

In Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663 (1974), the most recent decision on point, the Court reviewed the same cases discussed above, and concluded that "the innocence of the owner of property subject to forfeiture has almost uniformly been rejected as a defense." Petitioner is in the same position as the various owners involved in the forfeiture cases beginning with *The Palmyra* in 1827. She did not know that her car would be used in an illegal activity that would subject it to forfeiture. But under these cases the Due Process Clause of the Fourteenth Amendment does not protect her interest against forfeiture by the government.

Petitioner relies on a passage from *Calero-Toledo*, that "it would be difficult to reject the

constitutional claim of . . . an owner who proved not only that he was uninvolved in and unaware of the wrongful activity, but also that he had done all that reasonably could be expected to prevent the proscribed use of his property." But she concedes that this comment was obiter dictum, and "[i]t is to the holdings of our cases, rather than their dicta, that we must attend." Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 379 (1994). And the holding of *Calero-Toledo* on this point was that the interest of a yacht rental company in one of its leased yachts could be forfeited because of its use for transportation of controlled substances, even though the company was " "in no way . . . involved in the criminal enterprise carried on by [the] lessee" and "had no knowledge that its property was being used in connection with or in violation of [Puerto Rican Law]." Petitioner has made no showing beyond that here. . . .

Petitioner also claims that the forfeiture in this case was a taking of private property for public use in violation of the Takings Clause of the Fifth Amendment, made applicable to the States by the Fourteenth Amendment. But if the forfeiture proceeding here in question did not violate the Fourteenth Amendment, the property in the automobile was transferred by virtue of that proceeding from petitioner to the State. The government may not be required to compensate an owner for property which it has already lawfully acquired under the exercise of governmental authority other than the power of eminent domain. United States v. Fuller, 409 U.S. 488, 492 (1973); see United States v. Rands, 389 U.S. 121, 125 (1967).

At bottom, petitioner's claims depend on an argument that the Michigan forfeiture statute is unfair because it relieves prosecutors from the burden of separating co-owners who are complicit in the wrongful use of property from innocent co-owners. This argument, in the abstract, has considerable appeal, as we acknowledged in Goldsmith-Grant, 254 U.S., at 510. Its force is reduced in the instant case, however, by the Michigan Supreme Court's confirmation of the trial court's remedial discretion, and petitioner's recognition that Michigan may forfeit her and her husband's car whether or not she is entitled to an offset for her interest in it.

We conclude today, as we concluded 75 years ago, that the cases authorizing actions of the kind at issue are "too firmly fixed in the punitive and remedial jurisprudence of the country to be now displaced." *Goldsmith-Grant*, at 511. The State here sought to deter illegal activity that contributes to neighborhood deterioration and unsafe streets. The Bennis automobile, it is conceded, facilitated and was used in criminal activity. Both the trial court and the Michigan Supreme Court followed our longstanding practice. The judgment of the Supreme Court of Michigan is therefore affirmed.

COOPER v. SHEALY

537 S.E.2d 854, 140 N.C.App. 729
Court of Appeals of North Carolina, 2000

HUNTER, J.

Lisa Shealy ("defendant") appeals the trial court's denial of her motion to dismiss Christine Stalas Cooper's ("plaintiff's") claim under N.C.Gen.Stat. § 1A-1, Rule 12(b)(2) (1999) for lack of personal jurisdiction. Defendant contends that the trial court inappropriately denied her motion because the allegations in plaintiff's complaint neither satisfy the requirements of the North Carolina long-arm statute nor do they establish the necessary minimum contacts between defendant and North Carolina sufficient to meet due process requirements. We disagree. Accordingly, we affirm the trial court's order.

On 23 November 1998, plaintiff, a resident of Guilford County, North Carolina, filed a complaint against defendant, a resident of Lexington, South Carolina. Plaintiff's complaint alleged that defendant engaged in criminal conversation with plaintiff's husband, which resulted in the alienation of the affections of her husband. Plaintiff also alleged that defendant intentionally caused her severe emotional distress. Defendant filed a motion to dismiss pursuant to Rule 12(b)(2) for lack of personal jurisdiction, and also pursuant to Rule 12(b)(6) for failure to state a claim upon which relief may be granted. In its order, the trial court found that defendant had wrongfully contacted "Plaintiff and Plaintiff's husband by telephone, which contacts include[d] both telephone conversations and telephone transmitted e-mail to Plaintiff's home." In determining whether the court had personal jurisdiction to hear the claim under the North Carolina long-arm statute N.C.Gen.Stat. § 1-75.4(4), the trial court further found that:

> Such contacts were solicitations within the meaning of the statute carried on within this State for the affections of Plaintiff's husband . . . [and made] with the intent of harming the Plaintiff and the Plaintiff's marriage. Further [,] such solicitations and activities in and of themselves harmed the Plaintiff and Plaintiff's marriage.

Thus, the trial court concluded that it had jurisdiction over defendant pursuant to N.C.Gen.Stat. § 1-75.4(4), and that plaintiff's complaint did state claims upon which relief could be granted. Accordingly, defendant's motions to dismiss were denied. . . .

N.C.Gen.Stat. § 1-75.4(4) confers in personam jurisdiction:

> In any action for wrongful death occurring within this State or in any action claiming injury to person or property within this State arising out of an act or omission outside this State by the defendant, provided in addition that at or about the time of the injury . . .:
>
> a. Solicitation or services activities were carried on within this State by or on behalf of the defendant[.]

We recognize that "the statute requires only that the action 'claim' injury to person or property within this state in order to establish personal jurisdiction." Godwin v. Walls, 118 N.C.App. 341, 349, 455 S.E.2d 473, 480. The statute does not require there to be evidence of proof of such injury. Therefore, in order for plaintiff's claim for alienation of affections to withstand defendant's motion to dismiss, plaintiff must have alleged in her complaint that: "(1) plaintiff and [her husband] were happily married and a genuine love and affection existed between them; (2) the love and affection [between them] was alienated and destroyed; and (3) the wrongful and malicious acts of defendant produced the alienation of affections." Chappell v. Redding, 67 N.C.App. 397, 399, 313 S.E.2d 239, 241, review denied, 311 N.C. 399, 319 S.E.2d 268 (1984). Furthermore, for plaintiff's criminal conversation action to survive, plaintiff must have alleged that there were sexual relations between defendant and plaintiff's husband. Horner v. Byrnett, 132 N.C.App. 323, 511 S.E.2d 342 (1999).

From the record, we see that plaintiff alleged that "[she] and her husband were happily married and genuine love and affection existed between them; which love and affection was alienated and destroyed by the wrongful and malicious acts of the Defendant." Thus, plaintiff has effectively stated a claim for alienation of affections by addressing all of the necessary elements. Plaintiff also alleged that "[t]he Defendant has engaged, and continues to engage in acts of criminal conversation and sexual intercourse with [her] husband," thereby addressing the required element for a criminal conversation claim. For purposes of personal jurisdiction analysis, plaintiff's claims of injury due to defendant's telephone and e-mail solicitations are sufficient.

The question remains whether criminal conversation and alienation of affections are the type of "injury" contemplated by the statute. This Court has stated that the term

> "injury to the person or property" as used in G.S. 1-75.4(3) should be given a broad meaning consistent with the legislative intent to enlarge the concept of personal jurisdiction to the limits of fairness and due process, which negates the intent to limit the actions thereunder to traditional claims for bodily injury and property damages.

Sherwood v. Sherwood, 29 N.C.App. 112, 115, 223 S.E.2d 509, 512 (1976).

Accordingly, this Court has acknowledged that actions for alienation of affections and criminal conversation constitute "injury to person or property" as denoted by N.C.Gen.Stat. § 1-75.4(3). Golding v. Taylor, 19 N.C.App. 245, 198 S.E.2d 478, cert. denied, 284 N.C. 121, 199 S.E.2d 659 (1973). Furthermore, this Court concluded that the claims for negligent infliction of emotional distress and loss of consortium were similar enough to the claims in *Sherwood* and *Golding* to also be classified as "injur[ies] to person or property" under N.C.Gen.Stat. § 1-75.4(4). Thus, in the case sub judice, since the actions of alienation of affections and criminal conversation are identical to those in *Golding*, and the present plaintiff claims loss of marital consortium as did the plaintiff in *Godwin*, we will not deviate from precedent. Thus, plaintiff's claims are within the purview of N.C.Gen.Stat. § 1-75.4(4). . . .