



THE BACHLAWRETTE: DATING *DE NOVO*

Viewing Your New
Relationship with Fresh Eyes
(Unless It's Your Ex)

We're all familiar with *de novo* review, where an appellate court is asked to review issues of law anew — i.e., without deference to the lower court. This gives the appellant a new chance to prevail, unprejudiced by their lack of success in the prior proceedings.

We single folks similarly hope for a new chance of success in dating in spite of our past history. Yet, our outlook is inevitably influenced by our mixed bag of good and not-as-good dating experiences. Along the way, we may have formed negative beliefs about how certain types of people behave, about how relationships operate, and about our worthiness as a partner in general. These expectations, in turn, can become self-fulfilling: they can lead us to close ourselves off to new people, attract the wrong types of people, or wrongly judge new people based on false assumptions.

That is not to say that we shouldn't learn from our past experiences and apply those lessons going forward. Rather, we can learn to distinguish between issues of law — i.e., our general assumptions and beliefs about dating — and issues of fact, i.e., the specifics of a particular dating situation. The former should be reviewed *de novo*. Issues of fact, rather than law, should be our primary guide in assessing new relationships.

Review Ourselves and Our Prospective Partners *De Novo*

Applying *de novo* review starts with recognizing that we are not bound by our past dating misfortunes. As discouraging as these past experiences may have been, the past is not necessarily destined to repeat itself, especially if we allow ourselves to genuinely envision better outcomes. Starting with a clean slate and believing in our worthiness for a respectful and compatible partner is key to attracting new success in dating.

Along the same lines, we can view our potential partners with a clean slate. This requires minimizing judgments, good or bad, that are based on the person's background, culture, occupation, education level, or physical appearance. Applying the proper standard of review, a person whom we might

otherwise dismiss based on our biases could prove themselves to be a worthy candidate. Conversely, a person who seemingly has it all — status, looks, etc. — might not turn out to be quite the ideal partner if their underlying traits or behaviors show otherwise. These indications of a person's character are the ultimate fact issues and should be given due deference.

Use preemptory strikes sparingly; dismissals of prospective partners should predominantly be for-cause based on the traits and behaviors that you observe. Pay attention to any negative gut feeling that is rooted in the other person's words or actions. In making these assessments, we can rely on the same instincts and fact-finding abilities that also serve us as lawyers.

No “Ex” Parte Proceedings, With Exceptions

The one exception to de novo review? Getting back together with an ex. This is not the same as evaluating a new partner, as the previous relationship has already been litigated and decided. Claim preclusion normally bars re-litigation of a relationship between identical parties where there was already a final judgment on the merits. (There might be some wiggle room if the parties were merely “on a break,” a la Ross and Rachel.)

If you and your ex broke up, there was a reason for it. Simply deciding to get back together without addressing the underlying issues is unlikely to fix the disharmony that led to the break up in the first place. Although both parties might be on their best behavior at first, those underlying issues are likely to recur and lead to similar results.

As in law, there is an exception to every rule. In some cases, a new trial may be warranted in light of new evidence. For example, a long-distance relationship that failed due to geography may be able to be revived if one or both parties are willing to relocate. In other cases, a fundamental change in perspective or behavior from one or both parties may be capable of bridging the gap. Only you can know whether recoupling with an ex is the right decision under the circumstances.

If you are considering this decision, it is important that you and your partner are both aware of and equally committed to addressing the preexisting issues. Also make sure that you are not making the decision just because you miss them, you fear being alone, or you are worried about finding another suitable partner. Not only love but also a likelihood of success on the merits is necessary to give this proceeding a different outcome from the last.

*** Please note that this constitutes general information rather than legal advice. If confused about whether your breakup was a final judgment, consult Ross Geller or Rachel Green regarding your individual situation. For all other relationship matters, consult a qualified dating coach, therapist, or fortune cookie.

Do you have dating-related questions or stories/advice for lawyers? Send them to The Bachlawrette at bar@sdcbal.org for possible inclusion in a future column (anonymously, unless otherwise requested).

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