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## DANCING AROUND CONTRACTS AND BUSINESS ETHICS: LESSONS FROM ARTHUR MURRAY

DANIEL M. WARNER\*

*Arthur Murray was the early and mid-twentieth century dance instructor whose franchised mail-order dance courses, dance studios, and early TV show made him rich and famous. Arthur Murray's unethical business practices spawned a great deal of litigation. Many cases involve rich, elderly widows who get taken in by smooth-talking dance instructors and end up contracting for many tens of thousands of dollars of dance lessons. A 2010 article discussed how these plaintiffs are allowed to get out of their contracts. Of interest here is how they got into them. The sale of dancing lessons presents unique means and opportunities for the seller—with the right motivation—to play on the vulnerable buyer's emotional needs by exercising undue influence. An analysis of the unethical business practices here suggest how similar processes are at work throughout American consumer culture.*

### I. INTRODUCTION

*“Behind every great fortune there is a great crime.”<sup>1</sup>*

In the early and mid-20th century, Arthur Murray, the apparently benign dance instructor, chain dance-studio entrepreneur,

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1. See Quote Investigator, *Behind Every Great Fortune There Is a Crime*, QUOTE INVESTIGATOR (Sept. 9, 2013), <http://quoteinvestigator.com/2013/09/09/fortune-crime/> (quoting Honoré de Balzac). Balzac's actual writing, translated from French, in a serialization of “Le Père Goriot” published in “Revue de Paris” in 1834 read: “The secret of a great success for which you are at a loss to account is a crime that has never been found out, because it was properly executed.”

and television entertainer, was one of the best known (and no doubt one of the richest) men in the United States. Indeed, he was known around the world. The name “Arthur Murray” is known among generations of law school and undergraduate law students, as well.

His business operations spawned dozens of engaging, accessible legal cases.<sup>2</sup> The typical case involves an elderly widow, who, induced by a young dance instructor’s various blandishments, signs up for thousands of hours of dance lessons (in one case discussed below, the plaintiff signed up for \$220,000, in 2015 dollars, of lessons). One matter of interest in these Arthur Murray cases was taken up in a 2010 article by Professor Debora Threedy: how and why are these wealthy women—apparently entirely competent—allowed to by the courts to avoid their contracts?<sup>3</sup>

But this paper addresses a different point: if, as Professor Threedy puts it, the defenses were predicated on a condescending paternalism, on casting the plaintiffs as incapacitated, who was the paterfamilias—who was behind the idea? Second, how were these women enthralled to make such contracts—how did the Arthur Murray Dance Studios do it? Third, what broader ethical lessons may be gathered from examining the man and the cases?

Following this introduction, the typical (unethical) modus operandi of the Arthur Murray contract system is explored in four cases. Part III briefly describes the legislative response to these abuses. Part IV tracks the unethical practices to Arthur Murray himself. Part V, beginning a broader ethical analysis, examines the means, motive, and opportunity (“MMO”) behind the practices, with particular emphasis on the legal concept of undue influence. Part VI considers whether other businesses besides dance instruction might be rife with potential for similar abuses, and concludes.

Arthur Murray was born in Austro-Hungary, now Poland, in 1895. His father immigrated to the U.S. in that year; his wife Sara and their two small children joined him in the New York slums the

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2. See Debora L. Threedy, *Dancing Around Gender: Lessons from Arthur Murray on Gender and Contracts*, 45 WAKE FOREST L. REV. 749, 754 n.25 (2010) (listing several texts that use these cases in law school). These cases also appear in several undergraduate business law texts. A Google search turns up a great many references. Professor Threedy is at the College of Law, University of Utah.

3. See *id.* at 754 (concluding “[t]he contracts defenses are all based, to a greater or lesser extent, on paternalism: the plaintiff pleading a contract defense should be granted an exception from contract liability due to an impaired ability to protect herself in the marketplace”).

next year, after a harrowing cross-Atlantic sailing in steerage class. His original name was not Arthur Murray, but Moishe Teichman.<sup>4</sup>

Kathryn Murray, in her biography of her husband, records that he was always very ambitious: “By the time he was twelve, Arthur was already determined to make enough money someday to liberate his family from the squalor of the slums.”<sup>5</sup> He tried his hand at several possible careers, but the mechanism that the young man found to liberate himself and his family from squalor was unorthodox: teaching dancing. He started dancing to make friends, then in 1912 “[i]t occurred to him that perhaps he could make money from it as well.”<sup>6</sup>

In 1914, the skinny nineteen-year-old made his great move. The boy who “had grown up on the tough lower East Side” went to a resort hotel in Asheville, Georgia, to teach dancing.<sup>7</sup> There, on the eve of World War I, Moishe Teichman disappeared, shed the German-sounding name, and Arthur Murray emerged.<sup>8</sup>

Still not sure that dancing was a respectable career, in 1919, at the age of twenty-four, Arthur enrolled in Georgia Tech’s new business administration program in Atlanta. He wanted to be a “respectable” businessman.<sup>9</sup> But while going to school, he was making

4. See JANE HEIMLICH, JANE MURRAY HEIMLICH: OUT OF STEP 101–02 (2010). Jane Murray Heimlich is one of Arthur and Kathryn Murray’s two twin children.

5. See KATHRYN MURRAY ET AL., MY HUSBAND, ARTHUR MURRAY 34 (1960).

6. See *id.* at 39.

7. See *id.* at 41.

8. See *id.* at 45. Kathryn never mentions it, but the Murrays were Jewish. Arthur’s father was devotedly religious, and Arthur spoke fluent Yiddish. What the young man shed was not only a German-sounding name, but also a Jewish-sounding one. See HEIMLICH, *supra* note 4, at 34.

9. Arthur once used the disreputability of dance instruction to discourage competition. In the mid-twenties Murray was dismayed to discover that the book publisher, Doubleday, who was advertising a dance book by mail to sell for \$1.98, might sink his fledgling mail-order business. Murray went to see Nelson Doubleday in the chairman’s elegant, richly appointed New York offices. Oil portraits of ancestral g hung on the handsomely paneled walls. Murray’s protestations against Doubleday’s interloping were, nor surprisingly, totally unconvincing to the publisher. The interview was over. “Arthur stood uncertainly; there must be something more he could say—but what? He looked around the room at the huge portraits of Nelson Doubleday’s forebears and then said softly, ‘Since when were the Doubledays dancing teachers?’” Doubleday dropped its book idea. See MURRAY ET AL., *supra* note 5, at 58. Kathryn also relates that the New York Times refused—in the mid-twenties—to run one of Murray’s advertisements that typically featured photos of pretty Arthur Murray dance instructors because, the Times thought, it “had an immoral double meaning.” See *id.* at 83. One of Arthur’s girlfriends in Atlanta was a beautiful woman, but the relationship “was hopeless . . . Arthur knew her parents would never consider an uneducated dance instructor as a suitor.” See *id.* at 47.

good money as a dance teacher.<sup>10</sup> Arthur came to doubt that pursuing a college degree at Georgia Tech was the best use of his time.<sup>11</sup>

In 1923, he left Atlanta and returned to New York to make his living as a dancing teacher. Literally his was a rags-to-riches story. Kathryn's book has a great many anecdotes about the celebrities Arthur met and taught: Rockefellers, Vanderbilts, titans of industry of all sorts, entertainers, and politicians; Arthur Murray hobnobbed with them all.<sup>12</sup>

When Arthur married Kathryn "in the spring of 1925, his mail-order business, then six years old, was netting him \$35,000 a year" (about \$450,000 in 2015 dollars).<sup>13</sup> By 1946, Arthur Murray's business was grossing \$12 million a year (about \$140 million in 2015 dollars).<sup>14</sup> Arthur Murray was obviously an ambitious and hard-working man, and rich.

As an adult, Arthur Murray was not very good looking—with a bald head, matter-of-fact mouth and a receding chin. But such was his skill, renown, and strength of will that the rich and the famous and the otherwise elite thronged his studios.<sup>15</sup> He arranged, in 1920, the world's first radio broadcast of live dance music in the world.<sup>16</sup> He was so well known that in her biography of him, his wife relates this story from the early '20s (Murray's studio was in New York City): "Once a letter came to New York with nothing on

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10. See MURRAY ET AL., *supra* note 5, at 52. In 1923, B.C. Forbes, editor of Forbes Magazine, wrote an article about Arthur: *This College Student Earns \$15,000 a Year*. In today's money, this would equal \$200,000.

11. See *id.* at 55.

12. See *id.* at 3 (noting Murray taught Merriweather Post (Post Cereals), the Kennedys of Boston, Harvey Firestone, Mayor Jimmy Walker, Vincente Minnelli, Dorothy Kilgallen, and Mrs. Ed Sullivan).

13. See *id.* at 60; see also *Inflation from 1925 to 2015*, THE INFLATION CALCULATOR, <http://www.westegg.com/inflation/> (search "Enter the amount of money:" for "35,000" and search "Enter the initial year (1800–2015):" for "1925" and search "Enter the final year (1800–2015):" for "2015"; then follow "Submit" hyperlink).

14. See MURRAY, ET AL., *supra* note 5 at 104; see also *Inflation from 1946 to 2015*, THE INFLATION CALCULATOR, <http://www.westegg.com/inflation/> (Search "Enter the amount of money:" for "12,000,000" and search "Enter the initial year (1800–2015):" for "1946" and search "Enter the final year (1800–2015):" for "2015"; then follow "Submit" hyperlink).

15. See Eric Page, *Arthur Murray, Dance Teacher, Dies at 95*, N.Y. TIMES (Mar. 4, 1991), <http://www.nytimes.com/1991/03/04/obituaries/arthur-murray-dance-teacher-dies-at-95.html?pagewanted=1> (noting Murray's "customers included Eleanor Roosevelt, the Duke of Windsor, John D. Rockefeller, Jr., . . . Barbara Hutton," and many others).

16. See *Arthur Murry History*, ARTHUR MURRAY DANCE CENTERS, <http://arthurmurray.com/history/> (last visited Jan. 25, 2015); see also MURRAY ET AL., *supra* note 5, at 52–53 (describing same event).

the envelope but the name of the city and a sketch of the rising sun. The post office decided the sun must mean morning, or A.M.—who else but Arthur Murray?”<sup>17</sup> His 1950s television show, *The Arthur Murray Party*, was enormously successful: “Millions of viewers all over the country fell in love with the show and flocked to the Arthur Murray studios throughout the country. This highly popular show ran for twelve years on national television.”<sup>18</sup> Today, fifty years after its founder retired from the dance instruction business, there remain some 260 Arthur Murray Dance Centers worldwide.<sup>19</sup>

## II. THE TYPICAL LAW-SUIT FACT PATTERN: FOUR CASES INVOLVING THE ARTHUR MURRAY STUDIOS ARE EXAMINED HERE TO SHOW THAT THE ABUSIVE CONTRACTING WAS—AT LEAST SOMETIMES—THE MODUS OPERANDI OF THE ARTHUR MURRAY STUDIOS

### A. The Audrey Vokes Case

Choosing a favorite among the Arthur Murray cases is not easy. One that is in a number of the contract-law textbooks is from 1968. Following the trial court’s dismissal of her case for failure to state a cause of action, Audrey Vokes appealed to the Florida Court of Appeals.

In 1961, a “motivated acquaintance” of Mrs. Vokes’ “procured her to attend a ‘dance party’ at Davenport’s ‘School of Dancing.’” She had “a yen to be ‘an accomplished dancer’ with hopes of finding ‘new interest in life,’” and after a first free lesson, over a period of sixteen months (and fourteen separate contracts) her instructor, teaching her “sometimes in a private room,” convinced her to sign up for more and more dance lessons.<sup>20</sup>

From the time of her first contact with the dancing school in February, 1961, she was influenced unwittingly by a con-

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17. See MURRAY ET AL., *supra* note 5, at 71. For further evidence that Arthur Murray has been a household name, see *infra* Appendix 1.

18. *Our Studios*, ARTHUR MURRAY DANCE CENTERS, <http://arthurmurray.com/our-studios/> (last visited Jan. 25, 2016) (providing information about Arthur Murray dance studios).

19. See *id.* For a short video clip about the history of AM Studios, including Arthur and Kathryn Murray, see Robert Parish, *Arthur Murray Legacy*, YOUTUBE (May 31, 2012), [https://www.youtube.com/watch?feature=player\\_embedded&v=0PxdwcdD0ic](https://www.youtube.com/watch?feature=player_embedded&v=0PxdwcdD0ic). For what appears to be the only extant recording of an entire Arthur Murray Party television show, from February 1954, see MattTheSaiyan, *Arthur Murray Party—15 February 1954*, YOUTUBE (Apr. 21, 2012), <https://www.youtube.com/watch?v=4Rgy4wTu73c>.

20. See *generally* Vokes v. Arthur Murray, Inc., 212 So. 2d 906 (Fla. Dist. Ct. App. 1968).

stant and continuous barrage of flattery, false praise, excessive compliments, and panegyric encomiums . . . .

She was incessantly subjected to over-reaching blandishment and cajolery. She was assured she had “grace and poise”; that she was “rapidly improving and developing in her dancing skill”; that the additional lessons would “make her a beautiful dancer, capable of dancing with the most accomplished dancers”; that she was “rapidly progressing in the development of her dancing skill and gracefulness” . . . .<sup>21</sup>

She was sold hundreds of hours of lessons to be entitled to reach the “Bronze Standard” and then still more hours for the “Silver Standard.” While she had hundreds of hours of unused instruction, she was persuaded to buy more hours so that she could participate, at her own expense, in trips to Miami, to Trinidad, and to Mexico.<sup>22</sup> It was a scam. Her complaint alleged that “in truth and fact she did not develop dancing ability, she had no ‘dance aptitude,’ and in fact had difficulty ‘hearing the musical beat.’ [T]he lessons were sold to her ‘in total disregard to the true physical, rhythm, and mental ability of the plaintiff.’” “In other words,” the appeals court wrote, “while she first exulted that she was entering the ‘spring of her life,’ she finally was awakened to the fact there was ‘spring’ neither in her life nor in her feet.”<sup>23</sup> She wanted a refund of the \$31,090.45 (about \$220,000 in 2015 dollars) not chargeable against specific hours of instruction.<sup>24</sup>

To the defendants’ assertion that they were merely giving their opinion, which in contract law usually is no basis for misrepresentation, the appeals court observed, : “A statement of a party having superior knowledge may be regarded as a statement of fact although it would be considered as opinion if the parties were dealing on equal terms.”<sup>25</sup> The lower court’s order of dismissal was reversed;<sup>26</sup> assuming for the purposes of summary judgment that the complaint was true, the appeals court wrote that the \$31,000 was “procured from her by means and methods of Davenport and his associates which went beyond the unsavory, yet legally permissi-

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21. *See id.* at 907.

22. *See id.* at 907–08.

23. *See id.* at 908. One cannot forebear to mention that the court is remarkably condescending to Mrs. Vokes—“no spring in her life?” That seems harsh.

24. *See id.* at 908.

25. *See id.* at 909 (quoting *Ramel v. Chasebrook Construction Co.*, 135 So.2d 876 (Fla. Dist. Ct. App. 1961)).

26. *See id.*

ble, perimeter of ‘sales puffing’ and intruded well into the forbidden area of undue influence, the suggestion of falsehood, the suppression of truth, and the free exercise of rational judgment.”<sup>27</sup> “[T]he flowery eulogiums heaped upon her by defendants . . . proceeded as much or more from the urge to ‘ring the cash register’ as from any honest or realistic appraisal of her dancing prowess or a factual representation of her progress.”<sup>28</sup>

### B. The Agnes Syester Case

A second instructive case is that of Agnes Syester. She was in her sixties, a widow, and living alone when she first took a dance lesson at Arthur Murray studios in late 1954—the lesson was a gift from a friend.<sup>29</sup> She apparently liked it. On her second visit, she was interviewed by the manager and “sold a small course of dancing lessons.”<sup>30</sup> There followed what the court called “an astoundingly successful selling campaign”:<sup>31</sup> the studio sold the widow more than 4,000 hours of instruction, including three lifetime memberships, for a total of \$29,174 (about \$235,000 in 2015 dollars) and told her repeatedly that she could be a professional dancer. (The court here observes: “To make such a promise to a lady plaintiff’s age was ridiculous.”)<sup>32</sup>

Jerry Carey, a former AM (Arthur Murray) employee was Mrs. Syester’s instructor (he might have been a disgruntled former employee, but, the court observed, “his credibility was for the jury”).<sup>33</sup> He testified as to the sales technique taught to him over a two-month training period and which was based on “an exhaustive set of instructions, outlines, and suggested conversations covering twenty-two typewritten pages.”<sup>34</sup> Among the “pertinent parts” were:

“1. How to prevent a prospect from consulting his banker, lawyer, wife or friend.

“2. Avoid permitting your prospect to think the matter over.

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27. *See id.* at 907.

28. *See id.* at 909.

29. *See Syester v. Banta*, 133 N.W.2d 666, 669 (Iowa 1965).

30. *See id.*

31. *See id.*

32. *See id.* at 670.

33. *See id.*

34. *Id.*



“3. Tell the prospect that has never danced before that it is an advantage and tell the prospect that has danced before that it is an advantage.

“4. Dance with the prospect and then tell the prospect that the rhythm is very good, their animation or self-confidence is good, that their natural ability is very good. That they will be an excellent ballroom dancer in much less time and that if they didn’t have natural ability it would take twice as long.

“5. To summarize the prospect’s ability to learn as follows: ‘Did you know that the three most important points on this dance aptitude are: rhythm, natural ability and animation? You’ve been graded Excellent in all three.’

“6. In quoting the price for various courses, the instructor is supposed to say ‘the trouble with most people is that they dance lifelessly, but as I told you on your analysis, you have animation-vitality in your dancing. No matter what course you decide on you’re going to be a really smooth dancer (men would rather be a smooth dancer—women would rather be a beautiful, graceful dancer).’

“7. To use ‘emotional selling’ and the instructor is tutored as follows: ‘This is the warm-up period and is a very important part of your interview. You have proved to him by now that he can learn to dance; now you must appeal to his emotions in such a way that he will want lessons regardless of the cost.’”<sup>35</sup>

Mr. Carey became Agnes Syester’s regular instructor. Forty years her junior—he was twenty-five—and “apparently quite charming and fascinating to plaintiff,”<sup>36</sup> he plied Mrs. Syester with “attentions, inducements, promises and lies (he said they were). . . [s]he gave him a diamond ring for his birthday in 1960.”<sup>37</sup> When Mr. Carey was discharged, Mrs. Syester quit; she was “unhappy over the dismissal of Mr. Carey and left the studio.”<sup>38</sup> And she then sued the studio.

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35. *Id.*

36. *See id.* at 671. And probably good looking. Kathryn Murray, in her book about her husband, said she was, in the early days, “timid around the studio. The girl teachers looked glamorous, the men looked handsome.” *See* MURRAY ET AL., *supra* note 5, at 71.

37. *See Syester*, 133 N.W. 2d at 671.

38. *See id.*

There followed further “rather fantastic” testimony.<sup>39</sup> Mr. Carey was recalled by the employer who had recently fired him, and for this purpose: to persuade the widow to drop her lawsuit. He induced her to return to the studio; they danced. She dropped her lawsuit and signed a release. (Indeed, she signed two of them: on the second one *she* was the payor and the payee! The defendant said that was a mistake—the studio was to pay her. )<sup>40</sup>

The jury determined the releases were invalid, and on the plaintiff’s claims of fraud in the several sales to her and in obtaining dismissal of the previous lawsuits (with which defendant’s attorney, to his credit, would have no part)<sup>41</sup> awarded \$14,300 in actual damages and \$40,000 in punitive damages (about \$110,000 and \$306,000, respectively, in 2015 dollars, or over \$410,000). On appeal the court held that the evidence was adequate to find there was a concerted effort constituting fraudulent overreaching. The question of exemplary damages was properly submitted to the jury, “the evidence of greed and avariciousness . . . is shocking” and it supported the award of such damages.<sup>42</sup>

The case has two interesting aspects. First, we begin to get a firmer sense here that this over-persuasion is an Arthur Murray company-wide policy, not merely something thought-up by the local dance studio owner. Second, the fraud, the irresistible persuasion, goes further, almost comically further. Conning Mrs. Syester into all those dance lessons was bad enough; obtaining the releases from her was really beyond the pale: “There [was] evidence that defendants were attempting to lead plaintiff away from her own counsel. Their efforts were so far beyond the limits of propriety that their own counsel hesitated to participate.”<sup>43</sup>

### C. The Maude Ennis Case

The third case to review is Maude Ennis’ (from 1966). As described by her own lawyers she was “a 69-year-old lonely, unhappy widow, whose life was one boring bridge game after another . . . pondering what to do about her vacuous existence.” Arthur Murray studios telephoned inviting her to come in for a free trial lesson;

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39. *See id.*

40. *See id.* at 671–72.

41. *See id.* at 673.

42. *See id.* at 676.

43. *See id.* at 672. Surely Arthur Murray, Inc. did not give instructions on how to persuade a student to drop a lawsuit (Mr. Carey must have been very persuasive), but the part about signing prospects up for enormous numbers of lessons at an enormous price now begins to seem like standard operating procedure.

she declined. However, after more calls from Arthur Murray, “Mrs. Ennis, bored and lonely with time hanging heavily upon her hands, with the clock of life ticking on, went to Arthur Murray’s.”<sup>44</sup> She signed three contracts, the last was for \$13,120 (about \$98,000 in 2015 dollars), which entitled her to a lifetime membership.<sup>45</sup>

After Mrs. Ennis left the city of Phoenix for her summer escape to the “solitude and tranquility of her small cabin in the Rockies . . . it occurred to her she had been a fool to sign the life contract, to succumb to the blandishments of flattery of the people at Arthur Murray.”<sup>46</sup> Her health was not good and “as she has stated, she had ‘Methodist feet.’”<sup>47</sup>

She sued to avoid her contract, making two arguments: one, she made a mistake in thinking she was physically able to perform, when she was not. And two, that she was the victim of “high-pressure salesmanship, flattery and other unconscionable tactics . . . undue and unconscionable advantage alleged to have been taken of plaintiff in securing her consent . . . and in inducing her to part with \$13,200 in cash.”<sup>48</sup> The defendants denied any knowledge of such high-pressure salesmanship; the case was remanded when the Arizona Court of Appeals determined the summary judgment in the plaintiff’s favor was erroneously issued. “The plaintiff’s and defendants’ version of the facts are diametrically opposed so there are genuine issues of material facts.”<sup>49</sup> That is fine, but it is hard to imagine Mrs. Ennis just made that up about the salesmanship.<sup>50</sup>

Here again, an apparently competent woman—and certainly a rich one—is, by her lawyer’s own admission, made to be a “fool.”

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44. See *Lawless v. Ennis*, 415 P.2d 465, 468 (Ariz. Ct. App. 1966).

45. See *id.* “The studio was nice. Many people were there, enjoying themselves at what appeared to be a party. The instructors were gentlemen; they were very polite, very solicitous, and intent upon showing Mrs. Ennis a good time. And of getting her to sign a contract.” *Id.*

46. *Id.*

47. *Id.*

48. *Id.* at 469 (internal quotation marks omitted).

49. *Id.* at 470

50. As to the “mistake” issue: the Restatement (Second) of Contracts § 153, “When Mistake of One Party Makes a Contract Voidable,” provides as follows:

Where a mistake of one party at the time a contract was made as to a basic assumption on which he made the contract has a material effect on the agreed exchange of performances that is adverse to him, the contract is voidable by him if . . . the effect of the mistake is such that enforcement of the contract would be unconscionable . . . .

RESTATEMENT (SECOND) OF CONTRACTS § 153 (1981). As the summary judgment in her favor was reversed, the court did not get into the question of whether Mrs. Ennis’ physical disability made enforcement of the contract unconscionable. It could be a good argument.

The case gives further causes to suspect the overreaching is systemic, company-wide, and that Mrs. Ennis' fears about getting old ("the clock of life ticking on") is used by the instructor to entrance his student.

#### D. The Ryland Parker Case, 1973

Lest the reader think only elderly women were contractually abused by the Arthur Murray studios, consider the Ryland Parker case.<sup>51</sup> In 1959, the plaintiff, "a 37-year-old college-educated bachelor who lived alone in a one-room attic apartment in Berwyn, Illinois" redeemed a certificate entitling him to three free lessons. "During the free lessons the instructor told plaintiff he had 'exceptional potential to be a fine and accomplished dancer' and generally encouraged further participation."<sup>52</sup> He was thereafter induced to sign up for 2,734 hours of dancing lessons, at a cost of \$24,812 (about \$193,000 in 2015 dollars).<sup>53</sup>

All of the contracts Mr. Parker signed "contained the bold-type words, 'NON-CANCELLABLE CONTRACT,' and each written contract contained the bold-type words, 'NON-CANCELLABLE NEGOTIABLE CONTRACT.'"<sup>54</sup> "Some of the agreements also contained the bold-type statement, 'I UNDERSTAND THAT NO REFUNDS WILL BE MADE UNDER THE TERMS OF THIS CONTRACT.'"<sup>55</sup> Notwithstanding such language, and over the protests of the defendant, who asserted that by this language the plaintiff had waived the right to claim impossibility, the lower court relieved Mr. Parker of his contract obligations on the defense of impossibility: he had been injured in an auto accident and could not dance.<sup>56</sup> The Illi-

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51. *See Parker v. Arthur Murray, Inc.*, 295 N.E.2d 487 (Ill. App. Ct. 1973). Professor Threedy opines that because women tend to live longer than men, there are "fewer available men in her age cohort," and that the gender imbalance in the cases "could, therefore, simply reflect the demographics of the class of Arthur Murray students." *See Threedy, supra* note 2, at 760. But Professor Julia Ericksen, a sociology professor at Temple University, dance enthusiast, and author about dance, has a different take. She writes:

Some men find it difficult to be taught by a woman, which is one possible reason that there are many fewer male students than female. In addition, the flirting that is part of studio life has a different and potentially more dangerous meaning when the student is male and the teacher female, rather than the other way around.

JULIA ERICKSEN, *COME DANCE WITH ME: BALLROOM DANCING AND THE PROMISE OF INSTANT INTIMACY* 26 (2011).

52. *See Parker*, 295 N.E.2d at 487.

53. *See id.*

54. *Id.* at 489.

55. *Id.*

56. *See id.* at 487.

nois Court of Appeals affirmed.<sup>57</sup> Quoting familiar common law, the court held that:

Exceptions or reservations in a contract will, in case of doubt or ambiguity, be construed least favorably to the party claiming the benefit of the exceptions or reservations. Although neither party to a contract should be relieved from performance on the ground that good business judgment was lacking, a court will not place upon language a ridiculous construction.<sup>58</sup>

There are two ethical issues here of interest: first, the defendant's interpretation of the "no cancellation" clause was unconscionable (again, the court said giving it effect would be "ridiculous").<sup>59</sup> Second, contrary to the *Vokes* case, the appeals court affirmed the trial court's *dismissal* on the count of fraudulent misrepresentation, finding that the sales techniques here—Mr. Parker was told he had "exceptional potential to be a fine and accomplished dancer," that he was a "natural born dancer" and a "terrific dancer"—were merely "a matter of pumping salesmanship."<sup>60</sup> Why on the same basic facts did the courts come to different conclusions? Perhaps it was not necessary for the Parker court to wade into the issue of when an opinion is to be taken as fact for purposes of fraudulent misrepresentation if it could dispose of the case on the more objective basis of impossibility. Or perhaps the court was less willing to lump Mr. Parker—a man—into a class of incompetent plaintiffs along with the Arthur Murray women noted above: allowing him to avoid his contracts on the basis of misrepresentation would bring up the awkward fact that this man was thoroughly conned by his female dance instructor.<sup>61</sup>

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57. *See id.*

58. *Id.* at 490 (citation omitted). A non-ridiculous application might arise if, for example, the student moved to another state and could not use the lessons for which he had signed up.

59. *See id.*; *see also* Williams v. Walker-Thomas Furniture Co., 350 F.2d 445 (D.C. Cir. 1965) (describing elements of unconscionability).

60. *See Parker*, 295 N.E.2d at 489–90.

61. *See* ERICKSEN, *supra* note 51, at 212. Professor Ericksen makes a further observation relevant to this point that the women in the Arthur Murray cases are portrayed as "fools" and the men are not: "Whereas older men are allowed to enjoy dancing with beautiful young women, older women's romantic feelings about young men are considered laughable, even shocking." *Id.*

## III. THE LEGISLATIVE RESPONSE

These Arthur Murray contract cases, whatever else, demonstrate how abuse in the capitalistic system may spawn ameliorative regulation. The courts found ways to relieve many of these plaintiffs of their obligations (not always, by any means, on the undue influence theory), but such findings had little prophylactic effect, so the legislature stepped in.<sup>62</sup> By the early 1970s the Arthur Murray jig was pretty much up.<sup>63</sup> It is certainly not uncommon for an industry to behave outrageously and the legislature to adopt ameliorative legislation (and for the industry then to complain that the legislation is overbearing).<sup>64</sup> To AM's assertion that the California Dance Act was unconstitutional (apparently on the ground that was arbitrary), the court observed: "The enactment of the Dance Act in 1961 followed a long investigation of the business of operating dance and health studios."<sup>65</sup> Here is part of what the legislature

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62. See Threedy, *supra* note 2, at 758. The theories include: misrepresentation and fraud, unconscionability, violation of public policy, mutual mistake, unjust enrichment, and duress, as well as undue influence. See *id.*

63. See *id.* at 758 n.23. Professor Threedy observes:

[M]ost of these cases date from the late 1960s to the early 1970s. I suspect there are two reasons for this. First, this was a period of enhanced attention to consumer protection [referencing the Consumer Credit Protection Act, and the Magnuson-Moss Warranty FTC Improvement Act]. In addition, after this period, the need for litigation was mooted as legislatures enacted statutes prohibiting such long-term contracts. In addition, the Federal Trade Commission ("FTC") issued cease-and-desist orders in some instances.

*Id.* (citations omitted).

64. See MICHAEL E. PARRISH, SECURITIES REGULATION AND THE NEW DEAL 69 (1971) (commenting on contemporary reaction to provisions for sweeping potential underwriter liability in federal securities legislation in 1933 and 1934). One investment banker—Eustace Seligman—thought the laws unnecessary, explaining that "bankers of standing and financial responsibility" would never be a party to irresponsible selling practices in the securities business. Felix Frankfurter, then at Harvard Law School and one of the drafters of the legislation, "regretted that men of Seligman's probity and honesty had not been connected with all security issues. 'Then,' he added with sarcasm, 'there would be no need for any corrective legislation.'" *Id.* Following the financial meltdown of 2007–08, the federal government ramped up regulations on mortgage lenders; now the lenders complain that the "pendulum [has swung] too far toward overregulation," and they want relief. See Peter Eavis, *U.S. Loosens Reins, but Mortgage Lenders Want More Slack*, N.Y. TIMES, Oct. 23, 2014, at B1.

65. *People v. Arthur Murray, Inc.*, 47 Cal. Rptr. 700, 707 (Cal. Ct. App. 1965). "Arbitrary" (usually "arbitrary and capricious") means absence of "a rational connection between the facts found and the choice made." *Natural Res. Def. Council v. U.S. Envtl. Prot. Agency*, 966 F.2d 1292, 1297 (9th Cir. 1992). A clear error of judgment; an action not based upon consideration of relevant factors and so is "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law" or if it was taken without observance of procedure required by law." 5 U.S.C. § 706(2)(A) (2012).

found: “The opportunity to make a quick dollar at the expense of the lonely, credulous or impressionable customer has led to practices which form a pattern of overreaching and misrepresentation seriously close to fraud and extortion.”<sup>66</sup> This is the preamble to California’s Dance Act:

The Legislature finds that there exists in connection with a substantial number of contracts for health and dance studio services, sales practices and business and financing methods which have worked a fraud, deceit, imposition, and financial hardship upon the people of this State; that existing legal remedies are inadequate to correct these abuses; that the health and dance studio industry has a significant impact upon the economy and well-being of this State and its local communities; that the abuses and problems which have arisen in the field of health and dance studio services are similar and substantial as to both industries and peculiar to both industries as to kind or extent; and that the provisions of this title relating to such contracts are necessary for the public welfare.<sup>67</sup>

#### IV. THE ARTHUR MURRAY SCHOOL OF ETHICS: WHO AND HOW?

There is something remarkably ethically rotten going on in these Arthur Murray dance cases. One who studies them may wonder: were these abuses the doings of grasping local franchisees, or do they trace back to the man himself, Arthur Murray?

First, if it has not already been demonstrated above, it will be shown here that the unscrupulous tactics were a common part of the business practice—the *modus operandi*. Second, these practices originated with Arthur Murray himself; they were not the work of the local dance-studio franchisee. Third, this essay analyzes Arthur Murray’s motive, means, and opportunity for engaging in this unethical behavior. Fourth, the matter is taken out of mid-century dance classes to show more broadly what circumstances appear to make a customer a prime “mark” for being defrauded.

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66. *See* Contracts for Dance Studio Lessons and Other Services, CAL. CIV. CODE §§ 1812.50–1812.69 (West 2015).

67. §1812.50(a).

### A. Was Duping and Manipulating Clients AM's MO?

In 1946, Stuart Ross, writing in *Dance Magazine*, described his experience as an Arthur Murray instructor.<sup>68</sup> Ross related that “much more than the ability to become a good ballroom dancer was necessary” to get a job as a Murray instructor: he had to have “the ability to become a better than average salesman.” He was given a test to see if he had the potential to be a good salesman, not to see if he was a good dancer or a good instructor.<sup>69</sup> It was more important for the dance instructor to be able to retain a paying student “than to have the proper teaching background.”<sup>70</sup> “After the student had signed for one course, we were instructed to subtly lead him on to further training,” for which, of course, the instructor got a commission.<sup>71</sup> Weekly, Ross and the other dance instructors “attended business session in which sales problems were discussed and new approaches studied. We were made to realize why students did not always sign for more training and how to correct any faults in our approach . . . . Without discouraging him too much, I had to make the student feel self-conscious enough about his dancing so that he could readily see the need for more lessons.”<sup>72</sup> Instructors got promoted not based on their teaching, but on their selling (the lessons were \$7.00 per hour—about \$90 per hour in current dollars).<sup>73</sup> Ross concludes that “the pocketbook of the student of ballroom dancing has suffered considerably in financing [Arthur Murray’s, Inc.’s] exploitation.”<sup>74</sup>

In her extensive book-length study (and reminisce), *Glamour Addiction: Inside the American Ballroom Dance Industry*, Juliet McMains (currently a professor of dance at the University of Washington) recalls her first year as a dance instructor. Like her college-educated friends, she was accustomed to getting ahead by doing what was expected of her and following rules.<sup>75</sup> When she became a dance teacher, she learned more than just how “to reconstruct [her] body for sale in the economy of Glamour” (she wore makeup

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68. Stuart Ross, *I Taught for Arthur Murray: High Pressure Ballyhoo Has Turned Ballroom Dancing into a Multimillion Dollar Business*, DANCE MAGAZINE, Aug. 1946, at 29.

69. *Id.* at 10.

70. *Id.*

71. *Id.* at 11.

72. *Id.*

73. *Id.* at 10.

74. *Id.* at 29.

75. See JULIET MCMAINS, *GLAMOUR ADDICTION: INSIDE THE AMERICAN BALLROOM DANCE INDUSTRY* xiv–xv (2006).



for the first time, ditched cotton briefs for silk thongs, and shaved her legs).<sup>76</sup> She also learned that she did not know much about the “diversity” she had studied in comparative culture classes at Harvard.<sup>77</sup> She was in a new environment where most of her fellow instructors had very different codes of morality and behavior from hers. These dance instructors “had been able to improve their social or economic situations only through bending the truth, dodging the system, or manipulating other people. My ethics got me nowhere as an employee in a dance franchise because the entire system is built on duping and manipulating the clients.”<sup>78</sup>

Julia Ericksen’s interviewee “Howie” said,

I tell people I’m in sales, which I think is true for the most part. My main job is not teaching lessons; it’s selling lessons. And teaching them is just a method to do that . . . . The first thing you do is build rapport with your potential customer. You get to know each other, so you know where you are. You then find out what the customer needs . . . . They come in because they want to be more active, or they might want to make their wife happy, or they have an event coming up, or they’re lonely . . . or they want to feel pretty.<sup>79</sup>

One former AM instructor wrote, “I felt like a cross between a car salesman [and a] gigolo.”<sup>80</sup>

## B. It is Traceable to the Man Himself

### 1. *Salesmanship was Necessary, but This was Unscrupulous*

To make money from dancing, Arthur had to sell it. He did that with advertising and salesmanship. Kathryn mentions the importance of advertising and salesmanship several times (once Arthur gave advertising tips to Raymond Rubicam of the advertising firm Young and Rubicam).<sup>81</sup> In the late 1920s and early 1930s Arthur spent “huge amounts on advertising. He had to—even in prosperous years, many people were reluctant to enter a dance stu-

76. *See id.*

77. *See id.* at xiv

78. *Id.* at xv.

79. ERICKSEN, *supra* note 51, at 86.

80. DeadManDancing, Comment to *Arthur Murray Stinks*, BALLROOM DANCERS (Oct. 26, 2015), [http://www.ballroomdancers.com/message\\_board/view\\_messages.asp?Topic=16147&PageNum=9](http://www.ballroomdancers.com/message_board/view_messages.asp?Topic=16147&PageNum=9). There are, however, many reports by satisfied instructors and customers on the same commentary thread.

81. *See* MURRAY ET AL., *supra* note 5, at 90.

dio” (because, again, people, men especially, were reluctant to admit they took dancing lessons).<sup>82</sup> Once prospects were in the studio, more salesmanship was required:

Salesmanship is needed in our business because the average prospective student who walks into one of our studios expects to spend a few hours and, perhaps, ten to twenty-five dollars. It comes as a shock to learn that it takes at least fifty hours of practice and may cost over five hundred dollars to become a good dancer. To become exceptionally proficient takes even longer.<sup>83</sup>

However, it wasn’t just salesmanship; it was unscrupulous salesmanship. Consider the following passage from a federal court of appeals case—the Federal Trade Commission sued Arthur Murray, Inc., for deceptive advertising:

The record is replete with trick advertisements to draw prospects, sham dancing analysis tests, relay salesmanship, some under secret electronic supervision by management, promises of social status and companionship, psychological sales techniques based on past unpleasant experiences (described as X-Factor or “past is black” technique). In many instances these tactics added up to cajolery and coercion. Many were reduced to tears. One woman begged from her knees to be allowed to contract. Another woman testified:

The constant battering, it never let up. Two weeks at a time was about all they would let you go without being approached for some little additional something, not a big one, the big ones were about every two months and the little ones were about every two weeks. I was a nervous wreck there most of the time.<sup>84</sup>

Stuart Ross wrote that the instructors were “constantly reminded about selling new courses until it seemed that sales ability was primary, dance training secondary.”<sup>85</sup>

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82. *Id.* at 80.

83. *Id.* at 109.

84. *Arthur Murray Studio of Wash., Inc. v. Fed. Trade Comm’n*, 458 F.2d 622, 625 (5th Cir. 1972).

85. Ross, *supra* note 68, at 11.

2. *Arthur Murray was the Master Mind*

Kathryn Murray says *she* “wrote the first sales manual.”<sup>86</sup> This is probably only half correct, at best. Kathryn makes clear that she had no business experience at all when she married Arthur;<sup>87</sup> she writes, “[h]is manual telling how to select applicants [for dance instructors] is gospel for every new manager.”<sup>88</sup> In one part of her memoir, recalling how she “pumped Arthur for information and wrote our first teaching manuals” (mind you, *teaching*, not sales) Kathryn called herself “a minor Boswell recording Dr. Johnson’s sayings for posterity.”<sup>89</sup> (It was indeed John Boswell who, in the mid-18th century, recorded Samuel Johnson’s sayings for posterity. One of those sayings was Johnson’s take on Lord Chesterfield’s posthumously published *Letters to His Son*; Johnson memorably said, “They teach the morals of a whore and the manners of a dancing master.”)<sup>90</sup>

Whenever it was that Kathryn started to write the sales manual, she could not have started from scratch. She described Arthur’s work in the late 1930s “when the staff was small enough for Arthur to do all of the training himself. During rest periods . . . he talked business—advertising, how to bring new pupils to the studio and how to send reminders after cancelled appointments. He trained their minds as well as their feet.”<sup>91</sup> It was not until 1938, twenty-

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86. MURRAY ET AL., *supra* note 5, at 109.

87. Indeed, her honeymoon trip to Europe in 1925 was the first time she had ever been away from home; “[h]e even taught me,” she wrote, “the efficient way to wash my hairbrush.” *Id.* at 61.

88. *Id.* at 106. This manual on selecting applicants was gospel because getting salesmen (and women) was more important than getting dancing teachers. *See, e.g.,* Ross, *supra* note 68.

89. *See* MURRAY ET AL., *supra* note 5, at 108.

90. JOHN BOSWELL, *THE LIFE OF SAMUEL JOHNSON* 13 (1846). Philip Dormer Stanhope, the 4th Earl of Chesterfield (1694–1773) was a British statesman and man of letters. Kathryn describes several instances in which a newspaper or magazine refused to run Arthur Murray Dance Studio ads because ads for “dancing lessons” were not infrequently really for prostitution assignments. *See* MURRAY ET AL., *supra* note 5, at 65–66. And lest the reference to whores (above) seems really out of place, reread the *Vokes* case. Judge Pierce uses some particular terms to set the scene: “a motivated acquaintance, procured her to attend a ‘dance party’”; “monetary consideration . . . of over \$31,000 w[as] procured from her by means and methods of Davenport and his associates which went beyond the unsavory.” *Vokes v. Arthur Murray, Inc.*, 212 So. 2d 906, 907 (Fla. Dist. Ct. App. 1968). The word “procured” is a little odd. It has, as an alternate meaning: “[t]o obtain or illicit intercourse or prostitution.” WEBSTER’S NEW INTERNATIONAL DICTIONARY 1974 (2d ed. 1946); *see also* BLACK’S LAW DICTIONARY 1327 (9th ed. 2009); *Cf. id.* (“[P]rocurer. (15c) One who induces or prevails upon another to do something, *esp. to engage in an illicit sexual act.*” (emphasis added)).

91. MURRAY ET AL., *supra* note 5, at 97.

four years after he began his business, that Arthur put his wife to work, “handling branch correspondence and information sent to managers by mail.”<sup>92</sup> Arthur “gradually turned over his own correspondence to my desk,” she wrote,<sup>93</sup> but he remained busy, hovering over new trainees, watching them carefully, and attending a good portion of each day’s study.<sup>94</sup> The business required a lot of attention; in the 1930s Arthur “devote[d] most of his time and energy” to it.<sup>95</sup> Arthur sometimes gave his wife credit for the business’s success: “It embarrasses me to hear him talk—you’d think I was the Master Mind of the organization and *his* boss!”<sup>96</sup> No, Arthur Murray was the boss; he was “head man.”<sup>97</sup>

So, who gave the dancing instructors their instructions—not about teaching dancing—about how to make sales? We know the home office was involved—*People v. Arthur Murray, Inc.*, gets to that.<sup>98</sup> And Juliet McMains reiterates Stuart Ross’s observation that teaching dancing really is not the thing of interest in this business; Professor McMains writes, “[b]allroom dancers employed in the American studio system are trained first and foremost in sales; skill in dancing or teaching is sometimes little more than an afterthought.”<sup>99</sup> One recent instructor, working for AM, described the attributes the company looks for:

AM is CONSTANTLY searching for teachers in the Metro Detroit area. They do not want part time employees, they want full time only so that they can train you to sell sell sell. The “teaching” that is done there is laughable.

They sell you on “earning potential.” Fact of the matter is, if you do not upsell, you will average 8-9 bucks an hour and will have a 3-6-month lifespan as an employee.<sup>100</sup>

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92. *Id.* at 102.

93. *Id.* at 107. During the ‘30s Kathryn described her days as “endless and empty.” *See id.* at 72. The Murrays had a live-in housekeeper; with Arthur at work often until late, Kathryn writes, “I just didn’t have enough to do.” *Id.*

94. *See id.* at 108 (recollecting about Arthur’s work).

95. *See id.* at 73.

96. *Id.* at 110.

97. *See id.* at 133.

98. *See generally* *People v. Arthur Murray, Inc.*, 47 Cal. Rptr. 700 (Cal. Ct. App. 1965) (discussing case against Murray).

99. McMains, *supra* note 75, at 47.

100. Tap\_Dance\_Kid, Comment to *Arthur Murray Teachers?*, DANCE.NET (June 29, 2011, 6:28 PM), <http://www.dance.net/topic/9624407/1/Ask-a-Teacher/Arthur-Murray-Teachers.html&replies=5>. Dance.net, founded in 1996, bills itself as “the largest online dance community.” *See* DANCE.NET, <http://www.dance.net> (last visited Jan. 28, 2016).

Another modern-day instructor, writing on the ‘net, similarly claims that the AM training is primarily in sales practices, not dancing:

[I]f you want to work for a franchise you have to be good at sales first, dancing second. They teach you just enough to be able to teach someone else, to be a dancer you have to go the extra mile and practice when you’re not working. Essentially when you’re working you’re selling dance, when you’re not working is when you can learn and work on dancing.<sup>101</sup>

It appears that much of the training, even most of it, is not training to teach dancing at all, but training to sell the lessons. When his daughter Jane—briefly taking up teaching at an AM studio herself—failed to “discuss renewing lessons with [her] students,” Arthur called her out and brusquely told her she was wasting the student’s money, that it was useless for him to take so few lessons.<sup>102</sup> Arthur’s point: sell more.

Arthur was the Master Mind:

[The head office] knew that a portion of those receipts was obtained through unlawful contracts since it received weekly detailed reports on the extent of its operators’ violations.

. . . There is no evidence it ever advised its operators to obey the law. On the contrary, Arthur Murray, Inc., required its operators to transmit a percentage of sums received from the unlawful contracts for safekeeping.<sup>103</sup>

Granted it was a large organization, but Kathryn reports that “[o]ur branch schools send voluminous weekly reports; these [Arthur] reads with passionate concern while he putters about fixing his own . . . breakfasts.”<sup>104</sup> The deal was this:

The franchise holder pays royalties of up to 10 per cent of gross and in return has our studio name and receives continuous information on dancing, teaching, and every phase of management. The licensee is also subject to close supervision by traveling regional directors who re-

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101. dTas, Comment to *Arthur Murray training*. . ., DANCE FORUMS (Jan. 11, 2006), <http://www.dance-forums.com/threads/arthur-murray-training.11296/>.

102. HEIMLICH, *supra* note 4, at 21.

103. See *People*, 47 Cal. Rptr. at 706.

104. MURRAY ET AL., *supra* note 5, at 17.

port to Arthur on the appearance of the school, quality of the staff, business methods, and local reputation.<sup>105</sup>

The home office got information on “every phase of management.”<sup>106</sup> Of course, that must have included information on the contracts that were sold—the home office got ten-percent.<sup>107</sup>

If the thing of interest sold here is not dancing lessons, but dance-lesson contracts, how did AM sell those contracts? If his company was engaged in a remarkable conspiracy of unethical business practices (and even criminality)—if, as the crime shows put it: “We have a prime suspect”—it is instructive to explore the motive, means, and opportunity for this unethicity.

### C. Motive, Means, and Opportunity (“MMO”) Creates the Potential for “Ethical Hazards”

#### 1. *Defining Motive, Means, and Opportunity*

In general, “motive, means, and opportunity” is the popular cultural summation of three aspects of a crime that must be established in U.S. criminal law before defendant is convicted.<sup>108</sup> In a 2012 article in the *Journal of Business Ethics*, Professor Shripad G. Pendse extends this concept to unethical behavior. He observes, reasonably enough (because criminal behavior is unethical), “that the conjunction of MMO creates an ‘ethical hazard’: it increases the likelihood of unethical behavior but does not necessarily guarantee that it will occur.”<sup>109</sup>

Motive as defined by Pendse is “[a] person’s reason for choosing one behavior from among several choices.”<sup>110</sup> He elaborates—citing research—that a person will make a choice based on the probability of achieving the desired outcome, and its value.<sup>111</sup> “Multiplying these two components, probability and value, gives the

105. *Id.* at 106.

106. *See id.*

107. *See id.*

108. *See Means, Motive and Opportunity*, OXFORD REFERENCE, <http://www.oxfordreference.com/view/10.1093/acref/9780195072396.001.0001/acref-9780195072396-e-0412> (last visited Jan. 28, 2016). “The categorical trinity—means, motive, opportunity—provides a structure for detection method that has become . . . [a] convention.” *Id.*

109. Shripad G. Pendse, *Ethical Hazards: A Motive, Means, and Opportunity Approach to Curbing Corporate Unethical Behavior*, 107 J. BUS. ETHICS 265, 270 (2012) (citation omitted), available at <http://actoolkit.unprme.org/wp-content/resourcepdf/Ethical%20Hazards-%20A%20Motive,%20Means%20and%20Opportunity%20approach%20to%20Curbing%20Corporate%20Unethical%20Behaviour.pdf>.

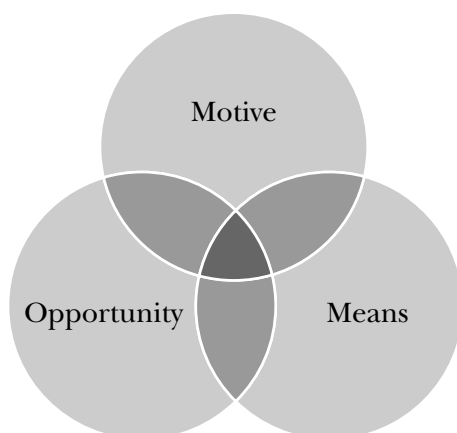
110. *Id.* (citation omitted).

111. *See id.*

‘expected value’ for each outcome and a person will make a choice that will maximize his or her expected value.”<sup>112</sup> Pendse cites research stating that “[d]ifferent people place different values on the same outcome, based on their need structure such as the levels of their need for Achievement, need for Affiliation or need for Power.”<sup>113</sup>

Means—in the MMO make-up—refers to the instrument(s) available to a person to carry out a task. In a murder case, for example, a gun may be the means. “In corporate crimes or unethical behavior, the means are usually not physical objects but a source of power that gives the executive the ability to behave unethically.”<sup>114</sup>

Pendse writes that the “third critical component in any potentially unethical behavior is opportunity. Opportunity can be defined as the ‘presence of a favorable combination of circumstances that makes a particular course of action possible.’”<sup>115</sup>



Here are those three elements—motive, means, and opportunity—in a Venn diagram. If Arthur Murray’s behavior fits the model, he’d be located at the intersection of the three ovals, known as the area of “ethical hazard,” as the title of Pendse’s piece puts it. Let us now examine whether his behavior actually does.

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112. *Id.*

113. *Id.* at 271 (citation omitted).

114. *Id.*

115. *Id.* at 272 (citation omitted).

2. *Analysis of the MOM for Arthur Murray*<sup>116</sup>

## a. The Motive

Motive is the reason for choosing one behavior over another. People decide on one course of action among several possible choices based upon how likely the choice of action will lead to a particular outcome, and how valuable the outcome is.<sup>117</sup> For example, what is a person's motive for taking the train instead flying? If both get the person to the same place, that's not the outcome of interest. If the desired outcome, however, is getting there in comfort—leg room—and that is more important than speed, then the person would have motive to choose the train: the choice of action (taking the train) will lead to the important outcome (getting there in comfort).

We return now to a further examination of Arthur Murray's life. The outcome Arthur Murray wanted was to improve his social status. People may be able to improve their social status in various ways, but in our society wealth is certainly a status assignor. Arthur Murray chose teaching dance for three reasons: he was a good dancer, it could improve his social status, and he could make money doing it.

Jane Murray Heimlich dug into her father's past to find out what made him brutally controlling. She found a childhood of extreme deprivation. The Teichmans (Arthur's real last name) lived in the immigrant slums of New York's lower east side. The slums were "great prison-like structures of brick, with narrow doors and windows, cramped passages and steep, rickety stairs . . . [residents] had to pick their way through sense swarms of bedraggled half-washed immigrants, past overflowing garbage barrels and beneath tiers of fire escapes heaped with mattresses and pillows that served as beds on a hot night."<sup>118</sup> The family, eventually five children and two adults, lived in a three-room rear apartment "lit only by a dim gray light coming through one window . . . [F]or four families there was only a sink with no hot water and no toilet." Jane writes, "I made a quick calculation. . . . If this was the norm, one toilet served twenty children and eight adults!"<sup>119</sup>

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116. For the purposes here, the order of presentation for the "MMO" is slightly altered. Motive, opportunity, and means will be taken up in that order ("MOM").

117. See Pendse, *supra* note 109, at 271.

118. See HEIMLICH, *supra* note 4, at 111.

119. *Id.* at 111–12.



Moishe—young Arthur—as his wife later wrote, was ambitious. He had “a deep, powerful urge to get ahead.”<sup>120</sup> His daughter wrote: “At 12, Moishe was a serious boy, determined to make enough money to liberate his family from the squalor of the slums.”<sup>121</sup> Having been told he had some talent at drawing, the young man apprenticed himself “with a tightwad who said I could work for him without a salary,” Arthur recalled.<sup>122</sup> His wife relates this: “The other men in the office were college graduates with good social backgrounds; Arthur still remembers their supercilious glances when he brought out his lunch in a brown paper bag.”<sup>123</sup> Drafting would not be his calling—there was little money in it and Arthur’s low social status could not be readily concealed.

Making money was obviously a way for a poor boy from the slums to improve his social status. So also, interestingly, was—is—dancing, or it can be made to seem so. Juliet McMains’ book, *The Glamour Machine*, makes this explicit: becoming a good dancer is seen to be a way to achieve social status. McMains refers to a dance historian who “has suggested that early twentieth-century ballroom dancing provided the opportunity for individuals to perform and perhaps even to improve their social class position.”<sup>124</sup> Whatever people “are seeking escape from—class background, racial stigmas, immigration status, prescriptive gender roles, aging bodies, sexual identity, or any other outsider social position” dance offers a chance to reform one’s identity.<sup>125</sup> Professor McMains follows several DanceSport competitors (“DanceSport” is competitive dancing) about whom she writes: “All of these characters . . . desire and experience escape from the limits of their own lives and transformation at multiple levels, often along one or more axis of sociopolitical identity. . . . Though the American-born dancers do not fantasize about national assimilation, they are all likewise motivated by fantasies of class ascendance.”<sup>126</sup> “Dance lessons . . . appear to solve a multitude of problems, including loneliness, social ineptitude, unattractiveness, and the effects of age.”<sup>127</sup> At the level of the

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120. See MURRAY ET AL., *supra* note 5, at 33.

121. HEIMLICH, *supra* note 4, at 113. Jane took this language from her mother’s biography; Kathryn had written in 1960: “By the time he was twelve, Arthur was already determined to make enough money some day to liberate his family from the squalor of the slums.” MURRAY ET AL., *supra* note 5, at 35.

122. See HEIMLICH, *supra* note 4, at 115.

123. MURRAY ET AL., *supra* note 5, at 38.

124. See McMAINS, *supra* note 75, at 6.

125. *Id.* at 18.

126. *Id.* at 29.

127. *Id.* at 55.

professional dancer, “[t]hey also promise fame, upward class mobility, and escape from the drudgeries of ordinary life.”<sup>128</sup>

Dancing accomplished that for Moishe Teichman. He first learned to dance at a settlement house where his goal was to be popular with girls; he won a waltz contest and took a job teaching dancing at Grand Central Palace.<sup>129</sup> He took a course of lessons at Castle House,<sup>130</sup> and then at the Castles’ suggestion moved south. In 1925, after “enormous success dancing his way through Asheville” North Carolina, where he gave lessons at a posh resort, Moishe Teichman disappeared and Arthur Murray emerged. In 1925, he returned to New York driving a \$12,000 Rolls Royce.<sup>131</sup> He was “an elegant dancer. No one in his circle of aristocratic Southerners suspected that Arthur Murray was Moishe Teichman, a Jewish boy raised in the slums of New York’s Lower East Side.”<sup>132</sup> Arthur was “his own best example of the transforming powers of dancing.”<sup>133</sup>

#### b. The Opportunity

So Arthur Murray had the motive. He had the opportunity, too, that is, “the presence of a favorable combination of circumstances that makes a particular course of action possible.”<sup>134</sup> The circumstance was that, because of AM’s extensive advertising, emotionally needy people walked right in the front door. Stuart Ross—who did the exposé in 1946—wrote: “As a result of advertising and publicity, a surprising number of people found their way to the studio without being directly approached.”<sup>135</sup> The draw was fun, certainly, but also status: “Murray’s ingenious marketing through television, media manipulation, advertising, and dance manual publication created a Murray brand name that came to be associ-

128. *See id.* at 55.

129. *See* MURRAY ET AL., *supra* note 5, at 40–41 (example: writing about Teichman’s first experience teaching dancing).

130. *See* HEIMLICH, *supra* note 4, at 114–15. Jane Heimlich relates that the Castles were “the outstanding society dance teachers of the era. . . . [Arthur] not only learned the graceful dances that the Castles popularized; he had his first glimpse of elegant society.” *Id.* at 116; *see also* McMANS, *supra* note 75, at 73 (writing “Irene and Vernon Castle were the most widely recognized dance celebrities of this era. . . . The Castles’ success in marketing their brand of elegant, wholesome, white dancing was remarkable”).

131. *See* MURRAY ET AL., *supra* note 5, at 12 (noting that car would be worth \$160,000 today).

132. HEIMLICH, *supra* note 4, at 121.

133. *See id.* at 16.

134. Pendse, *supra* note 109, at 272.

135. *See* Ross, *supra* note 68, at 10.

ated with social transformation through the performance of class status on the dance floor. Learning to dance the Murray way implied elegance, social acceptance, and exclusiveness.”<sup>136</sup> It was—is—a good opportunity.

c. The Means

I. *The Means: In General*

Arthur Murray had the *motive* to behave unethically: he wanted status and money. He had the *opportunity*: people walked in seeking dancing lessons. He had the means, too—the instrument available to carry out the task. It was selling dance lessons for big money. Pendse reports that two factors facilitate top management’s access to the power to behave unethically. First, weak corporate governance: the “near-absolute power enjoyed by the CEO and others provides the means for them to engage in unethical and/or illegal behavior.”<sup>137</sup> Second, “external agents” who “add to the power available to the CEO.”<sup>138</sup>

The power itself was—surprisingly to the unaware—the dancing lessons. Professor McMains explains:

The power a ballroom dance teacher acquires over his or her students through the intimacy of private lessons can be astounding. All business plans are structured around its potency. Studios operating under the successful model developed by Arthur Murray advertise a free or drastically reduced introductory special, which always includes a private lesson. It is during this first lesson that the foundation for Glamour seduction is set. Students succumb to the pleasure of being gently touched and coaxed by attractive and charming teachers whose appearance and manners are as carefully constructed as the lesson plans. . . . Single students staring into their teachers’ eyes often mistake love of dancing for a nascent love affair, forgetting that their teachers are paid to treat them with such fondness . . . .<sup>139</sup>

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136. McMains, *supra* note 75, at 76.

137. See Pendse, *supra* note 109, at 271 (giving examples from recent banking and financial scandals).

138. See *id.* at 271 (citing Enron’s external auditors Arthur Anderson, who colluded with management to cook Enron’s books, among other examples).

139. McMains, *supra* note 75, at 46.

It is really the point of Julia Ericksen's book that dancing studios trade on this power of intimacy:

[A]n intimate connection [is] something we think of as developing slowly by means of personal revelations and increasing mutual dependency. Yet, in ballroom, the emotional connection of the couple develops quickly. From the first lesson, the teacher's warmth and apparent pleasure in the lesson create a feeling in the student of being special. Furthermore, dance professionals learn to display an emotional connection with their . . . students, whether or not they feel it. In addition, dance involves a physical connection not normally available outside a sexual relationship. Dancers hold one another. They sweat together.<sup>140</sup>

As for Pendse's point about the near-absolute power, there is no doubt that Arthur Murray had it. He controlled his family brutally with money: "My father was the family godfather. All of us feared him and, God forbid, never crossed him. We allowed him to control our lives with the weapon he was as comfortable with as a Japanese samurai fingering the blade of his sword: money."<sup>141</sup>

And he controlled his business the same way: "One of the dance instructors," wrote Jane, "described my father's role [at the New York studio]: 'He was everywhere, supervised everything. He trained the new teachers, selected the dance music; he wrote ads, he designed the décor of the waiting room.'"<sup>142</sup> Kathryn relates that Arthur was, "autocratic, paternalistic, and fiercely independent."<sup>143</sup> Or again, he was "often impulsive and tactless,"<sup>144</sup> or "dictatorial, critical, and tactless."<sup>145</sup> His dictatorial nature rankled employees. In the late forties the grievances built up, and when the employees attempted to unionize—when even several teachers whom the Murrays had known for years "turned against [them]"—Arthur Murray was livid: "'I'll fight those Communists to my last nickel,' he vowed. 'I built up my business without their help, and I won't take orders from them. All they want is the dues from staff members, here and throughout the country.'"<sup>146</sup>

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140. ERICKSEN, *supra* note 51, at 21–22.

141. HEIMLICH, *supra* note 4, at 99.

142. *Id.*

143. *Id.* at 8.

144. MURRAY ET AL., *supra* note 5, at 110.

145. *Id.* at 70.

146. *Id.* at 113.

In the context of Pendse's manager's "near-absolute power," it is also interesting that the dance contracts emphasized the "confidential" nature of the lessons: no one will know that you are taking lessons.<sup>147</sup> This plays on the point that dancing was not entirely reputable. Kathryn gives many examples of men who were quite secretive, or embarrassed, about the fact they were taking dancing lessons—clearly they did not want others to find out.<sup>148</sup> For one person (a dance instructor) to know a secret about another person (that he is taking dancing lessons) is to give the first one a kind of power over the second.

And who were Pendse's "external agents" who added to the boss's power? The dance instructors, of course. They are the people trained, not to teach dancing except incidentally, but to sell dancing lessons.

## II. *The Means: Undue Influence*

Arthur Murray may—as suggested here—have had the motive to promote unethical business practices, and he may have had the opportunity. But a lot of businessmen come from humble beginnings and make good without lapsing into unethical behavior. A lot of businessmen have the opportunity to behave unethically but do not; all kinds of physical things are taught to students by instructors—from golfing to piloting aircraft—and not very many teaching businesses end up consistently providing examples of unethical contracting suitable for classroom case study. Here we may examine more closely the *means*.

Undue influence is a familiar contract defense. It was one of the defenses the *Vokes* court allowed to Audrey Vokes to avoid her contract: there the court opined that the studio "went beyond . . . 'sales puffing' and intruded well into the forbidden area of undue influence."<sup>149</sup> It is instructive to examine the elements of undue influence and see how curiously easy it may be to perpetrate this unethical behavior in the context of dance lessons.

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147. See, e.g., *Vokes v. Arthur Murray, Inc.*, 212 So. 2d 906, 907 (Fla. Dist. Ct. App. 1968) (noting contract terms set out in Audrey Vokes case). "No one will be informed that you are taking dancing lessons. Your relations with us are held in strict confidence . . ." *Id.*

148. See MURRAY ET AL., *supra* note 5 at 81. Arthur's advertising needed to "make readers of his ads feel comfortable, rather than embarrassed, at the thought of taking dance lessons. Arthur found that no man wanted to admit that he was learning to dance." *Id.* at 81; see also *id.* at 109 (noting that "[a]t least one in every five businessmen who come in gives a false name at the start . . . some always keep their lessons a secret from their friends, the office, and even their wives").

149. See *Vokes*, 212 So. 2d at 107.

In 1993 Dr. Margaret T. Singer<sup>150</sup>—a respected clinical psychologist and opponent of “cults”—wrote an article dealing with brainwashing and coercive persuasion that appeared in *Cultic Studies Journal*.<sup>151</sup> Her specific interest there was the use of undue influence by manipulative caretakers to obtain, from vulnerable victims, signatures on legal documents such as wills. There she described six factors frequently present in undue influence cases.

First, create isolation by controlling “as closely as possible all avenues of communication to and from the intended victim.”<sup>152</sup> In the dance instruction business this “isolation” is self-imposed—the victim usually wants it. Recall the contract in the *Vokes* case: it contained an “addendum in heavy black print, ‘No one will be informed that you are taking dancing lessons. Your relations with us are held in strict confidence.’”<sup>153</sup> And from the *Syester* case, the instructor was trained “[h]ow to prevent a prospect from consulting his banker, lawyer, wife or friend.”<sup>154</sup> Julia Ericksen observes that “[d]espite the seeming friendliness of the experience, Arthur Murray shrouds its studios and teachers in an air of secrecy.”<sup>155</sup> Intimacy is a kind of voluntary isolation, too, but not a bad kind: “Dance teachers produce intimacy when they teach students, by making students feel welcome and at home in the studio.”<sup>156</sup>

Second, “create a siege mentality.” The victim is led to believe that only the abuser can keep her safe. Relatives are portrayed as cold and uncaring, wanting—as Dr. Singer puts it—only to put the

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150. Margaret T. Singer (1921–2003) was “a leading expert on brainwashing who testified in several high-profile cases contending that various groups inappropriately manipulated their members to control their behavior.” She researched and testified about “techniques used by North Koreans against American soldiers in wartime and the Symbionese Liberation Army’s influence over the heiress Patricia Hearst. . . . Dr. Singer conducted several widely known studies on schizophrenia and was a renowned family therapist. She spent much of her career at Berkeley, but also taught at the University of Rochester and Albert Einstein College of Medicine, among others.” See Anahad O’Conner, *Margaret Singer, a Leading Brainwashing Expert, Dies at 82*, N.Y. TIMES (Dec. 7, 2003), <http://www.nytimes.com/2003/12/07/us/margaret-singer-a-leading-brainwashing-expert-dies-at-82.html>.

151. See Margaret T. Singer, *Undue Influence and Written Documents: Psychological Aspects*, 10 *Cultic Studies J.* 19 (1993), available at <http://www.prem-rawat-bio.org/academic/singer.html#undue>.

152. See *id.* (referencing the section “Conditions Facilitating the Work of the Influencer,” item 1).

153. See *Vokes*, 212 So. 2d at 107.

154. See *Syester v. Banta*, 133 N.W.2d 666 (Iowa 1965).

155. ERICKSEN, *supra* note 51 at 87.

156. *Id.* at 40.

victim “in a nursing home and take her money.”<sup>157</sup> In the dance world, the students—the female students, particularly—may feel that nobody except the instructor understands their interest in dance. The husbands of female dance students tell a male dance student, “For God’s sake, don’t tell my wife that you dance, or she’ll want me to [dance].” (The husband does not understand, and does not want to).<sup>158</sup> Or again, the uncaring family: “Phoebe’s children questioned her motives more strongly. They were embarrassed by her ardor for dancing, telling friends, ‘My mother’s lonely. She has nothing else to do. It’s a nice little hobby that she’s doing, but isn’t she getting totally carried away? Isn’t it taking over her life? Why is she so obsessed?’”<sup>159</sup>

Third, induce dependence. In Dr. Singer’s analysis the victim is lead to believe that “these ‘helping’ persons were the only trustworthy persons available.”<sup>160</sup> Transformed—very enjoyably—into the dance world, the student becomes dependent upon dance and on the dancing teacher because it all seems very pleasurable. Juliet McMains calls her book, “Confessions of a Glamour Addict” because, she admits to being “in love with the flow of energy between two people, fixated on the physical mastery, attracted to the spotlight, and driven by competition. It was Glamour that pinned me to the wall, that kept me hooked long after commitment and dedication had hardened into obsession and compulsion.”<sup>161</sup> And she writes:

An addiction to dance may not be physically or psychologically dangerous, but addiction to the Glamour Machine in which it is embedded may be damaging to one’s financial security, self-esteem, and social adjustment. . . . The layering of physical, emotional, and creative exertion, condensed into the focal point of desirous gazes, produces such a powerful rush for the dancer that few other experiences can match its intensity.<sup>162</sup>

Professor Ericksen, in her chapter titled “The Tan, the Hair, the Makeup: Embracing the Look,” makes clear that part of the obsessive lure of dancing is the show: “The lights, the movement,

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157. See Singer, *supra* note 151, at 18 (referencing the section “Conditions Facilitating the Work of the Influencer,” item 2).

158. See ERICKSEN, *supra* note 51, at 169.

159. *Id.* at 27.

160. See Singer, *supra* note 151, at 18 (noting item 3).

161. See McMAINS, *supra* note 75, at 1.

162. See *id.* at 59.

the music, and the color are a feast for the eyes and ears.”<sup>163</sup> The professionals, certainly (and to a lesser extent the serious amateurs) “exert great discipline and control to achieve bodies that look naturally libidinous. Vigilance can never stop.”<sup>164</sup> It is very pleasurable. Surely this can be a kind of dependence.

Fourth on the list of how undue influence is achieved, according to Dr. Singer, is promoting “a sense of powerlessness:” “The pawn is led to see that only the influencer or the one in charge has the power to do anything.”<sup>165</sup> The bright-side transformation of this element in the ballroom is the instructor’s affirmation that the student has great potential, but needs the instructor’s professional help to develop it.

Recall in the *Vokes* case the plaintiff’s “grace and poise were elaborated upon and her rosy future as ‘an excellent dancer’ was painted for her in vivid and glowing colors.”<sup>166</sup> She was “assured she was ‘rapidly improving and developing in her dancing skill’; that the additional lessons would ‘make her a beautiful dancer’ . . . etc., etc.”<sup>167</sup> Where else but by lessons at this dance studio could Mrs. Vokes, a widow without family, achieve her dream of becoming “an accomplished dancer?”<sup>168</sup> And in the *Parker* case the plaintiff was repeatedly assured that he had “‘exceptional potential to be a fine and accomplished dancer,’ that he had ‘exceptional potential’ and that he was a ‘natural born dancer’ and a ‘terrific dancer.’”<sup>169</sup> He only needed training. Mrs. Ennis also needed help from Arthur Murray. She was the “69-year-old lonely, unhappy widow, whose life was one boring bridge game after another” and whose existence was “vacuous.”<sup>170</sup> Until Arthur Murray called.

In an on-line reminiscence, Donald Edrington recalls signing up for some Arthur Murray lessons in Alexandria, Virginia in 1950: “They gave me the usual pitch about how I had a lot of potential—but that I really did need some professional instruction—and if I’d just sign up for this 60-hour course I’d be sweeping the ladies off their collective feet in no time.”<sup>171</sup> Here too, the student himself

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163. See ERICKSEN, *supra* note 51, at 125.

164. See *id.* at 128.

165. See Singer, *supra* note 151, at 18 (noting item 4).

166. See *Vokes v. Arthur Murray, Inc.*, 212 So. 2d 906, 907 (Fla. Dist. Ct. App. 1968).

167. *Id.*

168. *Id.*

169. *Parker v. Arthur Murray, Inc.*, 295 N.E.2d 487, 490 (Ill. App. Ct. 1973).

170. *Lawless v. Ennis*, 415 P.2d 465, 468 (Ariz. Ct. App. 1966).

171. Donald Edrington, *So I Decided to Take Some Lessons*, PC DON, <http://www.pcdon.com/page34.html> (last visited Jan. 31, 2015).



cannot do it; he is powerless, but he can be helped to achieve what he wants. Professor McMains makes it clear: "The Murray business strategy depended then, as it does today, on maintaining the illusion that the power and privilege associated with Murray dance knowledge can be accessed only through purchase of his products."<sup>172</sup>

The fifth factor Dr. Singer identified as promoting undue influence fostering and manipulating "a sense of fear and vulnerability."<sup>173</sup> Arthur Murray appears to have exploited his students' fears that they were unpopular, unattractive and of low social status. He "drew upon his own memories" in writing advertising copy, "using emotional appeals; 'Most people lack self-confidence. . . . Subconsciously, they would like to have more friends and be more popular, but they don't openly recognize this desire.'"<sup>174</sup> And, "How I Became Popular Overnight."<sup>175</sup> To be taken in by the assertion that you are developing grace and poise, that you are becoming an elegant, popular person, is to have the fear that you lack those things, that you are not that person, that there is some void, some "vacuous" lack, that needs filling. Professor McMain writes: "Teachers are specifically trained in seeking out the greatest emotional need for each student. Once identified, each student's program is tailored to meet, or at least to appear to meet, that emotional void."<sup>176</sup> "Consumers of Glamour," she writes, "are partially drawn by the promise of class ascendance (or the validation of high-class status), but equally compelling are fantasies of personal transformation along the line of race, gender, sexuality, ethnic assimilation and nationality."<sup>177</sup>

To be more specific about the need, it seems one attraction to students of AM-style ballroom dancing was—is—sex, not actual sex, but the playful sexuality the setup can afford. Of course not all the instructors go "so far as to have sex with . . . students in the stairwell during lessons," as one in Juliet McMains' recollection did, but "you

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172. McMains, *supra* note 75.

173. Singer, *supra* note 151, at 19 (noting item 5).

174. MURRAY ET AL., *supra* note 5, at 59.

175. *Id.* "Girls used to avoid me when I asked for a dance. Even the poorest dancers preferred to sit against the wall rather than dance with me. But I didn't wake up until a partner left me standing alone in the middle of the floor. That night I went home feeling pretty lonesome and mighty blue. As a social success I was a first-class failure." *Id.* (quoting advertisement featuring Arthur Murray on his quick rise in popularity). This ad, from a "single insertion in a national magazine . . . brought 37,000 results." *See id.*

176. McMains, *supra* note 75, at 47.

177. *Id.* at 7.

were expected to use the sexually charged environment to sell dance lessons. It is part of the job.”<sup>178</sup> Professor Threedy rightly comments that it is “highly likely that this whiff of sexuality permeates the rhetoric and narratives in these cases” involving Arthur Murray contracts, but she may understate the matter—it may be more than a “whiff.”<sup>179</sup> As Professor Ericksen puts it, discussing one middle-aged woman she interviewed, “The idea that money can buy intimacy helps explain why Phoebe looked to the commercial dance world for a dose of romance. Phoebe desired personal, but nonsexual, physical relationships with handsome young men, and she was willing to pay for them.”<sup>180</sup> One female interviewee reported, “I love how it makes me feel. It makes me feel more womanly than I’ve ever felt. It makes me feel more elegant. It makes me feel all the things I never was.”<sup>181</sup>

Another of Professor Ericksen’s interviewees:

[She] was realistic in her belief that partner dancing has a sexual component to it, and she understood that there is a sex-work component to teaching dance. As one of her male teachers had described it, “We are all a little bit prostitute. It’s part of the game. You’re not encouraging them. You’re making them feel good.” [The interviewee] added, “If flirting is part of making them feel good, so be it. It’s harmless and fun, and if they start to misunderstand, that’s when you lay off.”<sup>182</sup>

Again from Professor Ericksen:

A student’s experience: The teacher is good looking. He has a great body, he can dance. If you love to dance, watching a man like that totally enthralls you. He’s very flirty, and he likes hugging and kissing and touching. . . . I’m like, “Knock it off, will you?” Then I sort of started liking him. I realized, “Oh, he’s cute.” It was a gradual thing, because I couldn’t stand him at first. I thought he was pompous and arrogant and had an ego out the wazoo. And then was, “Oh, he’s kind of cute, and he’s a really good dancer, and he seems to like me.”<sup>183</sup>

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178. See, e.g., *id.*

179. See Threedy, *supra* note 2, at 767.

180. See ERICKSEN, *supra* note 51, at 26.

181. See, e.g., *id.* at 67.

182. *Id.* at 114.

183. *Id.* at 118. And one of the differences between the kind of physicality present in teaching ballroom, as opposed to, say, football or piano, is that bal-

"I'm not involved with them," said one interlocutor, "but definitely the essence of what dancing is all about is sex. It's a legitimized form of sexual interacting with people who you otherwise are not having physical relations with."<sup>184</sup> It is not that there is anything inappropriate going on here, physically or legally—usually. It is that dancing appeals to powerful needs and fantasies, and those can be exploited. When a dance instructor's income is based on getting students to contract for dance lessons, addressing a student's emotional needs as a come-on may result in undue influence.

The sixth and final element of undue influence recognized by Dr. Singer in her article on the subject is keeping the victim "unaware and uninformed about the construction of this false reality, that she was responding to an engineered or pseudoworld."<sup>185</sup> In the dance context, of course, the student is not unaware of the "pseudoworld," but such a world is, in a way, constructed. Kathryn Murray wrote that "[e]ven today Arthur is inclined to look toward the effect he wants, turning a blind eye to gritty detail."<sup>186</sup> She wrote:

Arthur has always believed in handsome, attractive studios, decorated by experts. In the twenties, when Spanish and Italian places were springing up at Palm Beach, our New York studio became a Florentine show place, decorated with heavy walnut furniture, red velvet seats, gold fringe, and massive carved doors. In the late thirties we switched abruptly to Early American, and then in the forties to Dorothy Draper modern.<sup>187</sup>

Professor Ericksen notes that "[t]he studio world contrasts with everyday life. Worries are to be left at the door. Pleasure is the order of the day, even when students are being exhorted to try harder."<sup>188</sup> Or again:

Women students delight in the joie de vivre created for them by their male teachers. Women control the purse strings, but what they buy is a safe expedition into a romance novel. . . . [S]tudents understand that this por-

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lroom is very highly gendered. "For many students and audiences, the gendered nature of this dancing is part of its attraction. Phoebe's husband had died shortly after she started. Male companionship was important to her." *Id.* at 25.

184. *Id.* at 197.

185. Singer, *supra* note 151, at 19 (noting item 6).

186. MURRAY ET AL., *supra* note 5, at 11.

187. *See id.* at 4.

188. ERICKSEN, *supra* note 51, at 27–28.

trayal [of a heterosexual-love relationship] is not real, [but] they want teachers to care about them and to enjoy their company. Teachers learn to quickly charm students with the appearance of closeness, affection, and a belief in the student's dance potential.<sup>189</sup>

Juliet McMains lays it out straight:

Students are not necessarily ignorant of the contestatory realities this romanticized image covers over. But much like the visitor to Disney World, who simultaneously does and doesn't believe in magic, they consent to be fooled by the mechanisms of Glamour in order to enjoy the temporary escapism it offers.<sup>190</sup>

Dr. Singer, specifically discussing undue influence in obtaining signatures, observes that:

There are infinite varieties of undue influence situations. Not all situations will include all the conditions outlined [here], and most cases will have their own unique set of circumstances. However, the six factors of undue influence outlined . . . will serve as guidelines to help evaluate whether undue influence is at work in the signing of documents . . . .

. . . .

The example of what transpires between a captor and captive illustrates the position of the signer in the constructed environment that is often created by those who corruptly influence and manipulate the elderly, the infirm, foreigners, and others to sign documents that benefit the person in the role of [manipulator] to the detriment of the signer.<sup>191</sup>

It is strange to analogize ballroom dancing instruction with these terrible abuses, but the analogy seems valid. The "documents" in question in the ballroom cases are the dance contracts. Obviously hostages, incest victims, abused children and so on are unlikely to sue their manipulators: what's going on is usually either illegal or beyond the reach of the law. However, giving dance instruction is not illegal. When it is practiced with the exercise of

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189. *See id.* at 225.

190. *See McMains, supra* note 75, at 46.

191. *See Singer, supra* note 151, at 20 (looking at "Summary" section).

undue influence, the victim can sue, and the Arthur Murray cases are the evidence.

#### IV. SUMMARY AND CONCLUSION

##### A. Summary

The Arthur Murray cases are interesting legal studies in contract law: rich elderly women are taken to the cleaners by suave young dance instructors who successfully foist unethical contracts upon them. One law professor has examined how the women get out of their contracts.<sup>192</sup> Here the focus has been on how they got taken *in* in the first place. Unethical behavior may usefully be analyzed as the product of motive, means, and opportunity—the same elements popularly said to be required to prove a person guilty of a crime. It is suggested here that Arthur Murray—the Jewish boy from the New York slums—had a particular motivation to achieve status, what Juliet McMains calls in this context “Glamour.” However, achieving status of some kind must be a nearly universal motivation. Without the means and the opportunity that motivation does not usually lead to unethical behavior. One who sells dancing lessons has peculiar access to a means and an opportunity to “exploit human needs and vulnerabilities created by other social failings,” and to persuade customers “that continued financial investment in acquiring Glamour capital will someday pay off.”<sup>193</sup> That means is undue influence.

##### B. Conclusion

Ballroom dance students agree to enter into abusive contracts because the product purchased—dancing lessons—appears to satisfy the students’ emotional needs for status, attention, affection, and even sex.<sup>194</sup> However, Professor McMains writes: “What is accomplished through the sale of dance lessons is not a solution to the students’ problems but an obstruction of them.”<sup>195</sup> And while she analyzes “how this process works in the very specific case of the contemporary American DanceSport industry,” she hopes “to sug-

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192. See Threedy, *supra* note 2.

193. See McMains, *supra* note 75, at 192.

194. See *id.* at 55. Certainly it should be clear that not all Arthur Murray dance contracts were or are unethical, that not all dance instructors exercise undue influence. The problem arises where the instructor is paid, not so much to teach, but to get students to sign up for lessons. Dance professors at universities, and those at non-profit schools are not in that situation.

195. See *id.*

gest how similar processes are at work throughout American consumer culture.”<sup>196</sup> She mentions “ice skating, cheerleading, gymnastics, dance team, beauty pageants, and martial arts” as activities whose participants suffer “from some sort of Glamour addiction.”<sup>197</sup> One might also add bodybuilding, sales of cosmetics, clothing, shoes, and tanning in tanning salons, and, probably middle-class prostitutes.<sup>198</sup> Further research that explores whether and how these activities are, like dancing instruction, subject to being sold using undue influence would be valuable.

Professor Pendse suggests that unethical behavior could be minimized by creating a process to identify and remove the ethical hazards arising from the conjunction of motive, means, and opportunity. That way, he writes, “one could reduce the probability of unethical behavior, somewhat in the same way that one can reduce the probability of a fire by removing fire hazards in a building.”<sup>199</sup> Specifically related to the dance industry, Professor McMains also makes some suggestions about how the abuses of commercialized ballroom dance instruction might be addressed. It appears, however, that most of them involve endeavors—dance classes in public schools, classes put on by non-profits that—while not “focusing on maximizing profits as the dance-as-business model requires” also, intentionally, do not make much money.<sup>200</sup> It seems unlikely that American consumer culture can be reformed, and the planet saved from over-consumption, until, somehow, harmful status-seeking can be curbed.<sup>201</sup>

To reduce unethical business practices, we might consider what Professor Pendse suggests: prevent the baleful combination of motive, means, and opportunity from coalescing. That, however, would not address the problem of social striving that, in some people, motivates the search for means and opportunity to gain status unscrupulously. Would it help if people could feel at ease with

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196. *See id.* at 16.

197. *See id.* at 199.

198. *See* Robin L. Hornung and Solmaz Poorsattar, *Tanning Addiction: the New Form of Substance Abuse*, SKIN CANCER FOUNDATION, <http://www.skincancer.org/prevention/tanning/tanning-addiction> (last visited Jan 31, 2015) (stating “It is easy to see why tanning [tanning beds] would be compared to other . . . dependencies. . . . They are often initially perceived as image-enhancing, and practiced despite knowledge of their dangers.”).

199. Pendse, *supra* note 109, at 277.

200. *See* McMains, *supra* note 75, at 196.

201. *See* BRIAN CZECH, *SHOVELING FUEL FOR A RUNAWAY TRAIN* 132 (2000) (suggesting harmful status-seeking could be curbed if women disdained conspicuously-consuming males as mates). Conspicuous consumption is a status demonstrator. *Id.*

themselves, secure in their social status, comfortable in their identity? Surely it would. It is beyond the scope of this paper to discuss how to do that. Richard Wilkinson and Kate Pickett have a series of suggestions which, if adopted, would make for a better society; “a society in which people are less divided by status and hierarchy; a society in which we regain a sense of community, in which we . . . own and control our work democratically as part of a community of colleagues, and share in the benefits of a grown non-monetized sector of the economy.”<sup>202</sup>

Meanwhile, what did Arthur Murray get for his hard work? Wealth and fame, certainly, but happiness? He was famously dour; and really he was not well-liked even by his own daughters.<sup>203</sup> “Frankly,” writes Jane Murray Heimlich, she and her twin sister “were afraid of our father. His biting criticism lashed out when least expected.”<sup>204</sup> Kathryn Murray closes her book relating this conversation with her husband, in the mid-1950s; he had observed that some of the AM teachers had worked for the business for “over twenty years and have never shown an interest in advancement.” Mr. Murray added:

“They earn enough to live nicely and they feel no need to drive themselves.”

“They’re not like you,” I said.

“No,” he agreed, “they’re not. They’re contented—that’s why they look young and happy. When you’re always pushing ahead you have no time for the fun in life. If I could have my choice, I’d be unambitious instead.”

“Instead of what?” I asked.

“Instead of being Arthur Murray—with an ulcer.”<sup>205</sup>

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202. See RICHARD WILKINSON AND KATE PICKETT, *THE SPIRIT LEVEL: WHY GREATER EQUALITY MAKES SOCIETIES STRONGER* (2010).

203. MURRAY ET AL., *supra* note 5, at 146 (stating in caption accompanying photograph following page 8, “Arthur, in a rare playful mood.” and “Arthur . . . looking solemn as usual.” Arthur “look[s] like an undertaker.”).

204. See HEIMLICH, *supra* note 4, at xiii.

205. See MURRAY ET AL., *supra* note 5, at 152.

Kathryn Murray twice attempted suicide.<sup>206</sup> It is not without some irony then, that she closed every TV “dance party” show with her motto: “Put a little fun in your life. Try dancing.”<sup>207</sup>

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206. See HEIMLICH, *supra* note 4, at 5, 133. (detailing Kathryn’s attempts at suicide). Once in 1930, when Kathryn threw herself out of a three-story window, and once in the late 1950s when she took an overdose of sleeping pills. *Id.*

207. See Mike Allen, *Kathryn Murray Dies at 92; Coaxed Many to ‘Try Dancing’*, N.Y. TIMES (Aug. 8, 1999), <http://www.nytimes.com/1999/08/08/nyregion/kathryn-murray-dies-at-92-coaxed-many-to-try-dancing.html>.