

Chapter 4

Divorce, Dissolution, and Annulment

CHAPTER OBJECTIVES

After reading this chapter and completing the assignments, you should be able to:

- Distinguish between annulment, dissolution, and divorce.
- Understand the reasons a marriage may be annulled.
- Understand the consequences of an annulment.
- Be able to describe the differences between a no fault divorce and a fault divorce.
- Be able to discuss the most common grounds required to get a fault divorce and some of the defenses that can be raised.
- Understand the requirements to obtain a no fault divorce.
- Understand the distinction between a divorce and dissolution of marriage.

The reality of today's society is that married couples are seeking to terminate marriages by divorce or dissolution in large numbers. This chapter introduces the paralegal student to some of the basic concepts associated with divorce, dissolution, and the less common annulment proceeding.

CLIENT INTERVIEW



Lisa Bailey was a little confused over her situation and decided it would be best to visit her attorney to help her understand her options at this point. Although the laws of her state require that a person be 18 to get married, she was

only 16 when she married Paul. Her relationship with him had deteriorated during their one year of marriage. She wondered what her options were to end the marriage at this point, if she decided to do so.

WHY THIS CHAPTER IS IMPORTANT TO THE PARALEGAL

The paralegal is a key player in the family law firm team when it comes to divorces, which comprises a large amount of the family law firm's caseload. The paralegal is often called upon to handle duties that include interviewing the client, gathering information about the case, doing legal research, and helping prepare the necessary documents associated with the divorce process.

Chapter 4 provides paralegal students with a basic understanding of the most fundamental concepts associated with the family law practice—divorce as well as dissolution of marriage and annulment. Understanding these legal concepts is critical to paralegals performing their duties in the family law firm.

WHAT ARE THE DIFFERENCES BETWEEN A DIVORCE AND AN ANNULMENT?

If you asked most people the difference between divorce and annulment, you would probably get a blank stare. Everyone knows a lot about divorces, but few really understand the distinction between the divorce and annulment. The distinction is, however, an important one in the study of family law.

The key difference between the two is simple. Divorce is the legal dissolution of a valid marriage. It returns the couple to the status of single persons. Annulment is the declaration that no valid marriage was entered into by the parties.

The impact each has on the people involved is more complicated, as will be demonstrated in this chapter.

VOID VERSUS VOIDABLE

As was discussed in Chapter 3, it is relatively simple to comply with the statutory requirements for entering into a valid marriage. Despite this fact, not all marriages are properly entered into. As a result, a marriage that does not conform to the laws of the state where it was entered into or that was not voluntarily entered into may be **void** or **voidable**. In those cases, couples may have the option of seeking an annulment rather than divorce if they wish to end their marriage.

The distinction between void and voidable is important in other areas of the law, such as contract law, but it is critical in the discussion of annulment.

The law treats a void marriage as if it never existed. The reasons a marriage may be void vary by state, but examples include incestuous marriages, same-sex marriages, and bigamous marriages. Since the law treats void marriages as if they had never existed, theoretically no legal proceeding is required to end the marriage. Couples may still go through the annulment process to resolve issues associated with their relationship, such as property distribution.

A voidable marriage is one that can be nullified if one or both of the parties decide to end the marriage. Unlike a void marriage, a voidable marriage is presumed to be valid until such time as the parties decide to end it by seeking an annulment. Reasons a marriage may be voidable include age, duress, **fraud**, mental capacity, and **coercion**.

ANNULMENTS

As noted previously, an annulment is a legal process that declares that no valid marriage ever existed. This should not be confused with a church annulment, sometimes referred to as a declaration of nullity, which is a separate procedure performed

void

A transaction that is impossible to be enforced because it is invalid.

voidable

Having the possibility of avoidance of performance at the option of the incapacitated party.

fraud

A knowing and intentional misstatement of the truth in order to induce a desired action from another person.

coercion

Compelling someone to do an act through physical force or threat of physical force.

pursuant to the rules of the church and has no bearing on the legal status of the married couple.

Annulments are sought to have a marriage nullified. It is a procedure that is sought based on the marriage being void or voidable. This is true even though, as previously noted, in cases involving a void marriage it is not technically required since a void marriage never existed.

Annulments are dealt with in the same manner as dissolution of marriage cases and are handled by the courts that have jurisdiction over dissolution of marriage cases.

Family law textbooks have usually included extensive discussions of annulments and the grounds for getting an annulment. This is probably true for a number of reasons. Annulments present a number of interesting legal concepts, such as the difference between void and voidable. These concepts are used in other areas of the law and their discussion reinforces the point that all areas of the law are interrelated.

Another reason that family law textbooks devote a lot of space to annulments is that they were often used by married couples who might not be able to get a divorce under older, stricter fault divorce laws. The number and frequency of annulments has undoubtedly decreased as states have enacted no fault divorce laws that make a divorce easier and cheaper to obtain, although in some states they are still commonly used.

In any case, the legal concept of annulments is an important one for the paralegal student to understand.

Grounds for an Annulment

As noted in the earlier discussion of the distinction between void and voidable, the law recognizes a number of factors to be considered by a court when dealing with a request to have a marriage annulled. These include age, fraud, duress, coercion, relationship/**incest**, capacity, impotence, and **bigamy**.

Void marriages violate some overriding public policy as set out in the applicable state statute. These include relationship/**incest** and **bigamy**. Voidable marriages are those a spouse can void if he or she decides to do so upon learning of the deficiency in the marriage. Reasons for a marriage to be considered voidable include being under the age as set out by statute at the time of the marriage, a spouse was induced to marriage by fraud or duress on the part of the other spouse, the parties lacked mental capacity due to things like intoxication, or it is discovered that one of the parties is impotent.

The reasons that a marriage may be declared voidable share one common element. They each involve a defect in the marriage that may be injurious to one of the people involved. That person has the right to decide if it is something he or she can accept and live with or if it is something that is a deal breaker and a basis to end the marriage.

Let's use incompetence as an example. Suppose a man and a woman meet each other in a bar in Las Vegas. They have a good time, but drink a little too much that evening. They decided that it would be a great idea to get married. What happens when they sober up and realize what has happened the night before? In this case, they could agree to stay married or, assuming that both of them lacked the mental capacity to know what the consequences of their actions were, either party could decide to end the marriage by annulment.

That is not to say that either party gets to decide to void a voidable marriage. In some cases it is only the innocent person who can seek an annulment. An example of this is a marriage obtained by use of fraud. Perhaps the husband lied about wanting to have children and the wife wanted children. In fact, it was one of the main reasons she married him. In that case, only the wife would be able to seek an

incest

Marriage/sexual relations between closely related relatives or family members.

bigamy

One spouse knowingly enters a second marriage while the first remains valid.

annulment. She was the person who was injured by the deception, and the law would not allow the husband to annul the marriage because he created the situation.

It is important to note that the wife would not have an unlimited time to seek an annulment because of the husband's fraud. Courts generally allow deceived parties a reasonable amount of time to seek legal remedies such as an annulment. So the wife in our example would only have a reasonable period of time to protect her rights once she becomes aware of the fact the husband does not want to have children.

The *Meagher v. Maleki* case, which is set out in the Case in Point, presents an interesting discussion of the law relating to fraud and marriage.

Figure 4.1 provides an example of some of the more common reasons why an annulment might be sought. Figure 4.2 sets out the North Dakota annulment statute that contains the state's grounds for annulment.

Consequences of an Annulment

Having a marriage annulled often creates more questions than answers. For example, what if there are children of the marriage? What happens to the property acquired during the marriage? Can either person get alimony? What about child support?

These questions grow out of the very reason people seek annulment; that is, the legal concept that the marriage is declared to have never existed. That declaration must be reconciled with the reality of things such as the parties having children. The modern trend is to recognize the children of a marriage that is annulled as being legitimate and the court handling the annulment will also deal with questions such as child custody, visitation, and support. The procedure used to accomplish these things does vary by state.

Reason for Annulment	Void or Voidable	Example
Age	Voidable	One or both parties of the marriage were not of legal age to enter into a valid marriage.
Fraud	Voidable	One party deceived the other <i>about</i> something critical to that party's deciding to marry. An example is one party stating he/she wants children but does not.
Duress	Voidable	One party uses actual threats of harm to induce the other to marry.
Relationship/incest	Void	States set out limitations on how closely a person can be married to the other party. For example, a parent cannot marry his/her child.
Capacity	Voidable	One or both parties are too intoxicated at the time of their marriage to have the legal capacity to consent to the marriage.
Impotence	Voidable	One party to the marriage was permanently impotent at the time of the marriage.
Bigamy	Void	One party is already legally married at the time of entering into a new marriage.

FIGURE 4.1
Examples of Grounds
for Annulment

FIGURE 4.2
2005 North Dakota
Annulment of
Marriage Statute

CHAPTER 14-04

ANNULMENT OF MARRIAGE

14-04-01. Grounds for annulling marriage. A marriage may be annulled by an action in the district court to obtain a decree of nullity for any of the following causes existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, as defined in section 14-03-02, or that such party was of such age as to require the consent of the party's parents or guardian and such marriage was contracted without such consent, unless, after attaining legal age, such party freely cohabited with the other as husband or wife.
2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force.
3. That either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband or wife.
4. That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.
5. That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife.
6. That either party was at the time of the marriage physically incapable of entering into the marriage state, and such incapacity continues and appears to be incurable.
7. That the marriage was incestuous.

Some state statutes also allow for property settlement and, in some instances, alimony. Others may take a more equitable approach in deciding the distribution of the property of the annulled marriage.

Annulments may also have an impact on the inheritance rights of the spouses once the annulment is granted. For example, it is not uncommon for a person to have a will that leaves everything to his or her spouse. A client would need to be advised to change his or her will when getting an annulment if there was such a will.

Defenses to Annulment

In some cases an annulment may not be granted by a court because of a **defense** raised by one of the parties. One of the most common examples is when the innocent party is aware of the problem but continues to stay in the marriage. This is true of impediments such as fraud, duress, age (once the person has reached legal age to marry), refusal to have sex/have children, impotence, and competency (if the party continues to stay in marriage after regaining competency).

defense

Legally sufficient reason to excuse the complained-of behavior.



RESEARCH THIS

The laws relating to annulment vary greatly from state to state. Research the case and statutory laws of your state relating to annulment. Your search should include the grounds on which an annulment may be granted, the

differences between void and voidable marriages, the consequences of annulment, and what defenses are available to an annulment action. Write a summary of your findings.



In the Court of Appeal of the State of California
 First Appellate District
 Division Two
Meagher v. Maleki
 A106079
 Filed 7/18/05

FACTS AND PROCEDURAL BACKGROUND

Appellant Ann Marie Meagher is a physician licensed as a psychiatrist. Respondent Malekpour Maleki is a real estate broker and investor, and has also been an importer and wholesaler of jewelry and Persian rugs. Meagher and Maleki first met socially in October 1997. At the time, Meagher was partially disabled and nearing retirement age, but was still working part time for the City and County of San Francisco. Maleki was in his late sixties and was living on the income from some real property he owned. Meagher believed Maleki to be a well-educated millionaire with expertise in real estate and finance.

Meagher and Maleki developed a romantic relationship, and became engaged in February 1998. They also entered into a business relationship, in the course of which Meagher bought three residential properties as an investment. Meagher bought the first property (in San Francisco) through Maleki as broker, and the other two (in Daly City and Concord) directly from him. With respect to the properties that Meagher bought directly from Maleki, he promised her that when they were sold, he would reimburse her for their purchase price. Meagher thought that he had done so, but realized later that the reimbursement had not been complete.

On August 28, 1999, after entering into the agreements for the business venture, Meagher and Maleki married. At the time of the marriage, the parties were already living together in Meagher's home in Tiburon. Meagher had between \$1 million and \$1.5 million in assets in addition to the substantial equity in her expensive home. For some time after the marriage, Meagher continued to work part time, and Maleki managed the parties' business venture. During this period, Meagher drew money out of her retirement savings in order to fund additional real estate investments made by the business venture.

Meagher continued to believe that Maleki was wealthy until sometime in February 2002, when Maleki told Meagher that the couple did not have enough money to cover either their living expenses or their business expenses, which included a large tax bill. At that point, Meagher began to doubt what Maleki had been telling her about his financial situation and about how he was running their business venture. She revoked a power of attorney she had given him, and demanded more information about the business venture. At that point, Maleki became hostile and began talking about getting a divorce. Meagher still wanted to make the marriage work, however, because she did not want a divorce for religious reasons.

In mid-April 2002, however, Maleki told Meagher that he would divorce her if she did not put all her assets, including her home and pension, into joint tenancy and give him total control. At that point, Meagher began to suspect that Maleki had married her just for her money. She asked Maleki to buy out her share of the business venture, as he had always represented to her he had the means to do, but he told her that he could not and did not want to do so.

The parties separated in April or May 2002, and on May 6, 2002, Meagher filed a petition for dissolution of the marriage.

DISCUSSION

On this appeal, Maleki does not challenge the trial court's factual findings that he fraudulently misrepresented his financial circumstances to Meagher prior to the marriage, and that he deceived her in connection with the business venture. He argues, however, that, as a matter of law, a prospective spouse's fraud regarding financial matters is not a proper basis upon which to order an annulment.

The longstanding general rule in California is that "a marriage may only be annulled for fraud if the fraud relates to a matter which the state deems vital to the marriage relationship. [Citations.]" (*Bruce v. Bruce* (1945) 71 Cal.App.2d 641, 643.) As one court explained, "because of its peculiar position as a silent but active party in annulment proceedings[,] the state is particularly interested in seeing that no marriage is declared void as the result of fraud unless the evidence in support thereof is both clear and convincing. Thus[,] . . . [because] '[t]he state has a rightful and legitimate concern with the marital status of the parties[,] . . . the fraud relied upon to secure a termination of the existing status must be such fraud as directly affects the marriage relationship and *not merely such fraud as would be sufficient to rescind an ordinary civil contract.*' [Citations.]" (*Williams v. Williams* (1960) 178 Cal.App.2d 522, 525, italics added [affirming denial of annulment based on trial court's factual findings either that wife did not misrepresent that she was widowed rather than divorced, or that husband did not rely on her representation in deciding to marry her].)

The most recent published opinion upholding an annulment on the basis of fraud dates from 1987, and involves the paradigm example of a spouse who "harbors a secret intention at the time of the marriage not to engage in sexual relations with [the other spouse]. [Citations.]" (*In re Marriage of Liu* (1987) 197 Cal. App.3d 143, 156; accord, e.g., *Handley v. Handley* (1960) 179 Cal.App.2d 742, 746; *Millar v. Millar* (1917) 175 Cal. 797.) Similarly,

“the secret intention of a woman concealed from her husband at the time of marriage never to live with him in any home provided by him would be a fraud going to the very essence of the marriage relation and of such a vital character as to constitute a ground for annulment.” (*Bruce v. Bruce*, *supra*, 71 Cal.App.2d at p. 643.) Annulment has also been held justified based on a wife’s concealment that at the time of marriage she was pregnant by a man other than her husband (*Hardesty v. Hardesty* (1924) 193 Cal. 330; *Baker v. Baker* (1859) 13 Cal. 87), or on a party’s concealment of his or her sterility (*Vileta v. Vileta* (1942) 53 Cal. App.2d 794) or intent to continue in an intimate relationship with a third person (*Schaub v. Schaub* (1945) 71 Cal.App.2d 467).

As these cases illustrate, annulments on the basis of fraud are generally granted only in cases where the fraud related in some way to the sexual or procreative aspects of marriage. The only California case of which we are aware that granted an annulment on a factual basis not directly involving sex or procreation is *Dougllass v. Dougllass* (1957) 148 Cal.App.2d 867 (*Dougllass*). In *Dougllass*, the Court of Appeal reversed a judgment denying an annulment to a woman whose husband, prior to their marriage, had “falsely and fraudulently represented to her that he was an honest, law abiding, respectable and honorable man” (*id.* at p. 868), and that he had only one child from a prior marriage, who was “‘well provided for.’” (*Ibid.*) In fact, the husband had been convicted of grand theft only a few years earlier and was still on parole, and three months after the marriage he was arrested for parole violation due to his failure to support his two children from his prior marriage.

The *Dougllass* court acknowledged that the test for annulment based on fraud is “whether the false representations or concealment were such as to defeat the essential purpose of the injured spouse inherent in the contracting of a marriage.” (*Dougllass*, *supra*, 148 Cal.App.2d at pp. 868–869.) The opinion in *Dougllass* went on to state in rather general terms that because “the fraud of the [husband] in concealing his criminal record and true character was a deceit so gross and cruel as to prove him to [the wife] to be a man unworthy of trust,” refusing her request for an annulment would be “unjust and intolerable.” (*Id.* at p. 870.) The facts of *Dougllass* make clear, however, that the court did not grant an annulment based merely on the husband’s general untrustworthiness. In holding the wife entitled to an annulment, the court relied in part on the fact that she already had two children from a former marriage, and that because of this, the “essentials of the marital relationship,” from the wife’s perspective, necessarily included having “husband of honorable character whom she could respect and trust, . . . and who would be a suitable stepfather for her children.” (*Id.* at pp. 869–870.) When the wife learned the truth about the husband’s failure to provide for his own children, her “hopes were shattered and her purposes defeated.” (*Id.* at p. 870.) Thus, even in *Dougllass*, the fraud that the court found to be sufficient grounds for annulment had some nexus with the child-rearing aspect of marriage.

In the absence of fraud involving the party’s intentions or abilities with respect to the sexual or procreative aspect of marriage, the longstanding rule is that neither party “may question the validity of the marriage upon the ground of reliance upon the express or implied representations of the other with respect to such matters as character, habits, chastity, *business or social standing, financial worth or prospects*, or matters of similar nature.” (*Schaub v. Schaub*, *supra*, 71 Cal.App.2d at p. 476, italics added.) In *Marshall v. Marshall*, *supra*, 212 Cal. 736,

740, for example, the court expressly held that the trial court properly denied relief to a wife who sought an annulment on the basis of her husband’s “fraudulent representation as to his wealth and ability to support and maintain” her, when in fact he was “impecunious” and subject to “harassment by creditors.” (*Id.* at pp. 737–738; accord, *Mayer v. Mayer* (1929) 207 Cal. 685, 694–695 [shoe salesman’s misrepresentation that he owned shoe store not sufficient grounds for annulment].)

More recent case law has not changed this longstanding rule. In 1993, for example, the Fourth District reversed a judgment granting an annulment to a wife who discovered after the marriage that her husband had concealed the facts that he had a severe drinking problem for which he declined to seek help, and that he did not intend to work for a living. Even though the wife also alleged that the couple’s “sex life after marriage was unsatisfactory,” the court still found that the fraud did not “go to the *very essence* of the marital relation” and therefore was not sufficient as a basis for an annulment. (*In re Marriage of Johnston* (1993) 18 Cal.App.4th 499, 500–502, italics in original.)

In the present case, Meagher does not contend that there is any evidence that Maleki lied to her about his marital history, or that he concealed an intention not to have sexual relations with her, not to live with her after the marriage, or not to discontinue an intimate relationship with a third party. On the contrary, the parties began living together even before their marriage and continued to do so for well over two years thereafter, and Meagher cites to no evidence in the record that she ever expressed any dissatisfaction with the intimate aspects of their relationship. Instead, she argues that the financial fraud at issue in this case is “at least as contrary to the essence of marriage” as the types of fraud that have been held sufficient to justify annulment. She cites no authority, however, either in California or elsewhere, for the proposition that annulment can be granted based on fraud or misrepresentation of a purely financial nature. As already noted, the cases are entirely to the contrary. Accordingly, we agree with Maleki that the fraud established in this case, as a matter of law, was not of the type that constitutes an adequate basis for granting an annulment.

Because we reverse the trial court’s decision on this basis, we need not and do not address Maleki’s alternative arguments that Meagher failed to establish the elements of her fraud claim. We leave it to possible future trial court proceedings to determine whether Meagher is entitled to rescission of the agreements underlying the business venture on the ground of fraud, and if so, what remedies are appropriate (*see generally, e.g., Runyan v. Pacific Air Industries, Inc.* (1970) 2 Cal.3d 304, 316 [purpose of rescission is to restore both parties to their former position as far as possible and to bring about substantial justice by adjusting equities between parties]), including what effect rescission may have on the characterization of the assets of the business venture as separate or community property for dissolution purposes.

DISPOSITION

The judgment is reversed, and the case is remanded to the trial court for further proceedings. In the interests of justice, the parties shall each bear their own costs on appeal.

RUVOLO, J.

Source: Retrieved from www.courtinfo.ca.gov/opinions/archive/A106079.DOC

DIVORCE

Any discussion of divorce must examine the types of divorce that may be used to end a marriage. Two types of divorce that are essential to an understanding of this topic are Fault Divorce and No Fault Divorce.

Divorce: Fault

Historically, states required a spouse to show grounds, in other words a legally recognized reason, to allow the marriage to be ended by divorce. Although states have moved away from the need to show fault, as noted in the upcoming discussion of no fault divorces, some still require such a showing in certain circumstances.

The most common statutory grounds for establishing fault include:

- **Abandonment/desertion.** Abandonment/desertion occurs when one spouse voluntarily, without justification, and without consent, or wrongful act of the other spouse, leaves that spouse for the period specified by state law. In situations where one spouse must leave because of the misconduct of the other, states apply the legal concept of constructive desertion. Constructive desertion allows the spouse who left to file for divorce based on desertion.
- **Adultery.** Adultery occurs when a married person has voluntary sexual activity with someone other than his or her spouse. To constitute a ground for divorce, the act must occur before the filing for divorce. Note the use of the word *activity*. Acts other than actual sexual intercourse, such as oral sex, may constitute the sufficient act to constitute adultery, unless otherwise provided by statute.
- **Cruelty/abuse.** Treatment by one spouse of the other that makes living together intolerable can constitute a ground for divorce. The mistreatment can be by physical violence or conduct that is mentally or physically injurious. The difficulty is that there is no simple judicial or statutory rule that states what is and is not cruelty or abuse. Instead courts use a case-by-case method to determine if the facts and circumstances surrounding a particular case constitute cruelty/abuse. Courts have great leeway in determining if an act or a combination of acts crosses the line and satisfies the statutory requirements for granting a divorce based on this ground. Statutes themselves vary on the terminology used to describe cruelty/abuse, including extreme cruelty, cruel and inhuman treatment, and cruel and repeated cruelty.
- **Drug/alcohol abuse.** Habitual illegal drug or alcohol abuse is a ground for divorce in some states, while other statutes require that the use of drugs/alcohol contributed to the failure of the marriage.
- **Duress.** Statutes vary on whether duress is a ground for divorce. Some allow it if physical force or threats of physical force caused the person to enter into a marriage he or she would not otherwise have entered into.
- **Fraud.** Fraud can be a basis for divorce if one party fraudulently induced the other to enter into marriage if the fact in question related to the validity of the marriage. Examples include undisclosed sexual impotence and that the woman was pregnant by another man at the time of marriage.
- **Imprisonment.** If specified by statute, imprisonment of one spouse for the time period specified by statute can be a ground for divorce.
- **Insanity.** Insanity is a ground for divorce in a number of states. Many require that the spouse who has been adjudicated insane must be institutionalized for a specific period of time before filing for divorce.
- **Nonsupport.** The voluntary failure to provide for the support of a spouse can be a basis for a divorce in some states if the failure continues for the statutorily prescribed time.



CASE BRIEF ASSIGNMENT

Read and brief the *Meagher v. Maleki*, 131 Cal.App.4th 1, 31 Cal.Rptr.3d 663 (Cal. App. 2005) case. (See Appendix A for information on how to brief cases.)



RESEARCH THIS

If your state allows for fault divorces, research the statutory and case law relating to the grounds for divorce and write a brief summary of your findings.

If your state does not allow for fault divorces, select a state that does and research the statutory and case law relating to the grounds for divorce and write a brief summary of your findings.

Divorce: No Fault

Divorce laws underwent major changes in the 1970s. The reasons were many, but as a general statement, society began to feel that husbands and wives should have an easier way to divorce if they both agreed that the marriage was irretrievably broken.

As a result of the recognized problems associated with fault divorces, many states began to change their laws. This eliminated a couple's need to falsely allege one of the recognized grounds for divorce or, in some cases, to actually commit the required act in order to get a divorce. States replaced the more traditional statutes with ones that provided a simple and relatively inexpensive process to end a marriage. This has continued to the point that all states allow some form of a no fault divorce.

As the name implies, no fault laws only require an allegation that the marriage is irretrievably broken or that irreconcilable differences exist. There is no need to allege fault on the part of the other spouse. In some states, such as Florida, only one of the spouses needs to live in the state for a period of six months before filing for divorce and then must merely allege that the marriage is irretrievably broken. If the other spouse does not contest this allegation, the only proof that is required is that the spouse who filed the divorce has lived in the state for the preceding six months.

Other states still require that the spouse go through a waiting or separation period before the final divorce can be granted. These periods vary by state and may be months, a year, or more.

Figure 4.3 provides the state statutes that deal with grounds for divorce, including no fault divorces.

Defenses to Divorce

The issue of defenses to a divorce also relates to whether the divorce is a fault or no fault divorce.

A number of defenses may be allowed in fault divorce cases. These include:

- **Condonation**, which is based on the same legal theory as discussed in defenses to annulment, can be used as a defense to divorce when a spouse has been aware of the ground for divorce but forgives those acts and continues in the marriage despite them.
- **Recrimination** is the defense that the person seeking the divorce was, in fact, himself or herself guilty of an act that would be grounds for divorce.
- **Connivance** occurs when one spouse allows or consents to the other committing the acts that are alleged as grounds for the divorce.
- **Collusion** is a defense based on the spouses agreeing that the act necessary to be a ground for divorce was committed, or at least appear that the act was committed.

condonation

Defense in divorce based on spouse's awareness of a ground for divorce but who expressly or impliedly forgives those acts.

recrimination

Defense in divorce based on the fact the person seeking the divorce was, in fact, him- or herself guilty of an act that would be grounds for divorce.

connivance

Defense in divorce action that is based on the fact that one spouse allowed or consented to the other committing the acts that are alleged as grounds for the divorce.

collusion

Illegally created agreement of the parties.

Alabama	Ala. Code tit. 30 ch. 2.1, et seq.	Nevada	Nev. Rev. Stat. § 125.010
Alaska	Alaska Stat. §§ 25.24.200, 25-24-050	New Hampshire	N.H. Rev. Stat. Ann. ch. 458
Arizona	Ariz. Rev. Stat. Ann. tit. 25 ch. 312, 901, 903	New Jersey	N.J. Rev. Stat. tit. 2A ch. 34-2
Arkansas	Ark Code Ann. tit. 9, ch. 12-301	New Mexico	N.M. Stat. Ann. art. 4, §§ 40-4-1 et seq.
California	Cal. Family Law Code §2310	New York	N.e Y. Dom. Rel. art. 10
Colorado	Colo. Rev. Stat. art. 10 § 14-10-106	North Carolina	N.C. Gen. Stat. §§ 50-5.1, 50.6
Connecticut	Conn. Gen. Stat. tit. 46b, ch. 40	North Dakota	N.D. Cent. Code ch. 14-05-03
Delaware	Del. Code. Ann. tit.13, ch. 1505	Ohio	Ohio Rev. Code Ann. § 3105.01
Florida	Fla. Stat. ch. 61.052	Oklahoma	Okla. Stat.tit. 43 § 101
Georgia	Ga. Code Ann. §§ 19-5-3	Oregon	Or. Rev. Stat. §§ 107.025, 107.036, 107.015
Hawaii	Haw. Rev. Stat. tit. Ch. 41	Pennsylvania	Pa. Code tit. 23, § 3301
Idaho	Idaho Code tit. 32 ch. 603, 610	Rhode Island	R.I. Gen laws tit.15, ch. 15-5-2, et seq
Illinois	Ill Rev. Stat. ch.750 ch. 5, para. 401	South Carolina	S.C. Code Ann. ch. 3, § 20-3-10
Indiana	Ind. Code tit. 31 art. 15 ch. 2-3	South Dakota	D.D. Codified Laws Ann. tit. 5, ch. 25-4-2, 25-4-17, 25-4-18
Iowa	Iowa Code §§ 598.5, 598.17	Tennessee	Tenn. Code Ann. §§ 36-4-101, 36-4-103
Kansas	Kan. Stat. Ann. ch. 60, art.16	Texas	Tex. Family Code Ann. §§ 6.001-6.007
Kentucky	Ky. Stat. Ann. ch. 403.140	Utah	Utah Code Ann. § 30-3-1
Louisiana	La. Code Civ. Proc. Art. 103	Vermont	Vt. Stat. Ann, tit. 15, §§ 551, 555
Maine	Me. Rev. Stat. Ann. tit. 19A, § 902	Virginia	Va. Code Ann. § 20-91
Maryland	Md. Family Law Code Ann. §7-103	Washington	Wash. Rev. Code § 26.09.030
Massachusetts	Mass. Gen. L. tit. III ch. 208	West Virginia	W. Va. Code §§ 48-5-202 and 48-5-209
Michigan	Mich. Comp. Laws ch. 552.6	Wisconsin	Wis. Stat. § 767.07
Minnesota	Minn.Stat. §§518.06, 158.13	Wyoming	Wyo. Stat. §§ 20-2-104, 20-2-105
Mississippi	Miss. Code Ann. § 93.5.1, et seq.	District of Columbia	D.C. Code Ann. §§ 904, 905, 906
Missouri	Mo. Rev. Stat. §452.305		
Montana	Mont. Code Ann. tit. 40, ch. 4		
Nebraska	Neb. Rev. Stat.ch. 42 §§ 361, 362		

FIGURE 4.3 State Statutes: Grounds for Divorce



ETHICS ALERT

The discussion relating to the defenses to a fault divorce brings up an important ethical issue a paralegal might face. Whether a paralegal is working on a fault divorce or a no fault divorce, certain things must be alleged and sometimes proven in court. It is important that the paralegal does not participate in any way to

produce false evidence, including knowingly using false information as part of a defense in a divorce action. The law firm has a duty to zealously represent its clients, but the rules do not allow for the firm or its employees to be a party to such activities.



CYBER TRIP

Although the legal consequences of a divorce are easily established, the emotional impact of divorce is more complicated and has become a major discussion point in the law and society. There is a growing question about these consequences of divorce as they have become more common, especially as a divorce's effect on the children of the marriage becomes more visible. Use the Web sites set out in Appendix A to learn more about the social impact of divorces and how states are trying to address the social problems associated with divorce.

As the law has moved toward no fault divorces, these defenses, like the need to allege grounds for divorce such as adultery, cruelty/abuse, abandonment, imprisonment/insanity, and undisclosed sexual impotence in order to get a divorce, are not as frequently used.

Obviously, few defenses are available in no fault divorces. The reason for this is that one spouse merely need allege that the marriage is irretrievably broken or that irreconcilable differences exist between the spouses. States generally do not require that this allegation be proven, only stated as true by one of the spouses. Some states do allow the other spouse to contest the allegation that the marriage is irretrievably broken. If this allegation is contested, then the state statutes often grant the judge the power to require additional things to be accomplished before determining whether the marriage is irretrievably broken. For example, a statute may allow a judge to order that the parties undergo marital counseling.

In fact, the defenses just discussed have been specifically abolished in many no fault states. See Figure 4.4. This is because when the states eliminated the need to state grounds for divorce, the associated defenses were no longer needed. Since all that is required is for one party to state that the marriage is irretrievably broken, the only issue that can be raised is that the nonfiling party denies that the marriage is irretrievably broken. The judge in the proceeding may require additional proceedings when a minor child is involved if such an allegation is made.

Consequences of a Divorce

The law has developed a set of standards on how to deal with issues relating to most aspects of a divorce. These include the resolution of matters such as child support, child custody, visitation, alimony, and distribution of property and debts.

The biggest legal problems relate not so much from the divorce procedure itself but instead involve the enforcement of the final order of dissolution of marriage. Key areas of concern are child support payments, alimony payments, and child visitation rights. These issues are discussed in more detail in later chapters.

Societal impacts of divorces are not so clear-cut. The one thing that is certain is that divorce is common in the United States. While divorce rates do vary somewhat by state, as is demonstrated by the figures contained in Figure 4.5, every state has had to face the reality of the large numbers of divorces that are granted every year. Increasingly states have been trying to slow down the rise in divorces to protect the institution of marriage and the children of the marriage. As mentioned in Chapter 3, one method has been to offer the option of covenant marriages, which make it more difficult to get a divorce.

DISSOLUTION

The terms *divorce* and *dissolution of marriage* are often used interchangeably. Although this is acceptable in general conversation, there can be a critical difference between them depending on the state in which the proceeding is taking place. For example, many states have eliminated the use of the word *divorce* and instead use *dissolution of marriage*. In those states, the legally correct term is *dissolution*, but it is essentially the same as divorce.

Other states have created by statute a separate means of terminating a marriage that is specifically referred to as dissolution. It is a form of no fault termination of marriage in which the parties agree to the terms of their separation. These include spousal support, child support, division of marital assets, parental rights, and so on. The judge is asked to grant the termination of the marriage and approve

61.052 Dissolution of marriage.—

- (1) No judgment of dissolution of marriage shall be granted unless one of the following facts appears, which shall be pleaded generally:
 - (a) The marriage is irretrievably broken.
 - (b) Mental incapacity of one of the parties. However, no dissolution shall be allowed unless the party alleged to be incapacitated shall have been adjudged incapacitated according to the provisions of s. 744.331 for a preceding period of at least 3 years. Notice of the proceeding for dissolution shall be served upon one of the nearest blood relatives or guardian of the incapacitated person, and the relative or guardian shall be entitled to appear and to be heard upon the issues. If the incapacitated party has a general guardian other than the party bringing the proceeding, the petition and summons shall be served upon the incapacitated party and the guardian; and the guardian shall defend and protect the interests of the incapacitated party. If the incapacitated party has no guardian other than the party bringing the proceeding, the court shall appoint a guardian ad litem to defend and protect the interests of the incapacitated party. However, in all dissolutions of marriage granted on the basis of incapacity, the court may require the petitioner to pay alimony pursuant to the provisions of s. 61.08.
- (2) Based on the evidence at the hearing, which evidence need not be corroborated except to establish that the residence requirements of s. 61.021 are met which may be corroborated by a valid Florida driver's license, a Florida voter's registration card, a valid Florida identification card issued under s. 322.051, or the testimony or affidavit of a third party, the court shall dispose of the petition for dissolution of marriage when the petition is based on the allegation that the marriage is irretrievably broken as follows:
 - (a) If there is no minor child of the marriage and if the responding party does not, by answer to the petition for dissolution, deny that the marriage is irretrievably broken, the court shall enter a judgment of dissolution of the marriage if the court finds that the marriage is irretrievably broken.
 - (b) When there is a minor child of the marriage, or when the responding party denies by answer to the petition for dissolution that the marriage is irretrievably broken, the court may:
 1. Order either or both parties to consult with a marriage counselor, psychologist, psychiatrist, minister, priest, rabbi, or any other person deemed qualified by the court and acceptable to the party or parties ordered to seek consultation; or
 2. Continue the proceedings for a reasonable length of time not to exceed 3 months, to enable the parties themselves to effect a reconciliation; or
 3. Take such other action as may be in the best interest of the parties and the minor child of the marriage.

If, at any time, the court finds that the marriage is irretrievably broken, the court shall enter a judgment of dissolution of the marriage. If the court finds that the marriage is not irretrievably broken, it shall deny the petition for dissolution of marriage.

- (3) During any period of continuance, the court may make appropriate orders for the support and alimony of the parties; the primary residence, custody, rotating custody, visitation, support, maintenance, and education of the minor child of the marriage; attorney's fees; and the preservation of the property of the parties.
- (4) A judgment of dissolution of marriage shall result in each spouse having the status of being single and unmarried. No judgment of dissolution of marriage renders the child of the marriage a child born out of wedlock.
- (5) The court may enforce an antenuptial agreement to arbitrate a dispute in accordance with the law and tradition chosen by the parties.
- (6) Any injunction for protection against domestic violence arising out of the dissolution of marriage proceeding shall be issued as a separate order in compliance with chapter 741 and shall not be included in the judgment of dissolution of marriage.
- (7) In the initial pleading for a dissolution of marriage as a separate attachment to the pleading, each party is required to provide his or her social security number and the full names and social security numbers of each of the minor children of the marriage.
- (8) Pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each party is required to provide his or her social security number in accordance with this section. Each party is also required to provide the full name, date of birth, and social security number for each minor child of the marriage. Disclosure of social security numbers obtained through this requirement shall be limited to the purpose of administration of the Title IV-D program for child support enforcement.

FIGURE 4.5
Ranking of Divorces
by State

State	2004 Rank	Divorce Rate per 1,000 in 2004	State	2004 Rank	Divorce Rate per 1,000 in 2004
District of Columbia	1	1.7	Montana	23	3.8
Massachusetts	2	2.2	New Hampshire	25	3.9
Pennsylvania	3	2.5	Utah	25	3.9
Illinois	4	2.6	Vermont	25	3.9
Minnesota	5	2.8	Virginia	28	4.0
Iowa	5	2.8	Oregon	29	4.1
North Dakota	5	2.8	Washington	29	4.1
Connecticut	8	2.9	Arizona	31	4.2
New Jersey	9	3.0	Colorado	32	4.4
Rhode Island	9	3.0	North Carolina	32	4.4
New York	9	3.0	Mississippi	34	4.5
Wisconsin	12	3.1	New Mexico	35	4.6
Maryland	12	3.1	Alabama	36	4.7
South Carolina	14	3.2	West Virginia	36	4.7
South Dakota	14	3.2	Florida	38	4.8
Kansas	16	3.3	Alaska	38	4.8
Michigan	17	3.5	Kentucky	40	4.9
Texas	18	3.6	Tennessee	41	5.0
Maine	18	3.6	Idaho	42	5.1
Nebraska	18	3.6	Wyoming	43	5.3
Delaware	21	3.7	Arkansas	44	6.3
Ohio	21	3.7	Nevada	45	6.4
Missouri	23	3.8	United States	mean	3.7

Note: Data not available for: California, Georgia, Indiana, Louisiana, Hawaii, Oklahoma.

the agreement that the parties have entered into. In these states, divorce refers to a court finding that grounds exist for termination of the marriage. Figure 4.6 contains some of the key Ohio statutory provisions relating to dissolution of marriage in that state.

SEPARATION

In some situations, married couples decide that they want to live separately but not get divorced. The reasons for this vary. Examples of why it is sometimes desired include one spouse wanting to remain on the spouse's health insurance policy, or the couple wants a trial separation. Many states do provide for this in some cases, referring to it as *legal separation* or *separate maintenance*.

States that recognize this right of action allow a spouse to seek spousal and child support payments from the other spouse in much the same manner in which he or she would if the couple were actually getting a divorce, which is discussed in detail in subsequent chapters. The amount of the support award is based on the need of the requesting spouse and the other spouse's ability to pay. One important difference from the matters that can be resolved in an action seeking separate maintenance and a divorce is that only support can be sought in a separate maintenance action and not matters involving the resolution of property. Payment of separate maintenance normally ceases when the parties resume cohabitation, or there is dissolution of the marriage or the death of a spouse.

3105.08 Converting divorce action into dissolution action.

At any time before a final judgment is entered in a divorce action, the spouses may convert the action for divorce into an action for dissolution of marriage by filing a motion with the court in which the divorce action is pending for conversion of the divorce action. The motion shall contain a petition for dissolution of marriage that satisfies the requirements of section 3105.63 of the Revised Code. The action for dissolution of marriage then shall proceed in accordance with sections 3105.61 to 3105.65 of the Revised Code with both spouses designated as petitioners. No court fees or costs normally charged upon the filing of an action shall be charged upon the conversion of the action for divorce into an action for dissolution of marriage under this section.

3105.63 Separation agreement provisions.

(A)(1) A petition for dissolution of marriage shall be signed by both spouses and shall have attached and incorporated a separation agreement agreed to by both spouses. The separation agreement shall provide for a division of all property; spousal support; if there are minor children of the marriage, the allocation of parental rights and responsibilities for the care of the minor children, the designation of a residential parent and legal custodian of the minor children, child support, and parenting time rights; and, if the spouses so desire, an authorization for the court to modify the amount or terms of spousal support provided in the separation agreement. If there are minor children of the marriage, the spouses may address the allocation of the parental rights and responsibilities for the care of the minor children by including in the separation agreement a plan under which both parents will have shared rights and responsibilities for the care of the minor children. The spouses shall file the plan with the petition for dissolution of marriage and shall include in the plan the provisions described in division (G) of section 3109.04 of the Revised Code.

(2) The division of property in the separation agreement shall include any participant account, as defined in section 148.01 of the Revised Code, of either of the spouses, to the extent of the following:

- (a) The moneys that have been deferred by a continuing member or participating employee, as defined in that section, and that have been transmitted to the Ohio public employees deferred compensation board during the marriage and any income that is derived from the investment of those moneys during the marriage;
- (b) The moneys that have been deferred by an officer or employee of a municipal corporation and that have been transmitted to the governing board, administrator, depository, or trustee of the deferred compensation program of the municipal corporation during the marriage and any income that is derived from the investment of those moneys during the marriage;
- (c) The moneys that have been deferred by an officer or employee of a government unit, as defined in section 148.06 of the Revised Code, and that have been transmitted to the governing board, as defined in that section, during the marriage and any income that is derived from the investment of those moneys during the marriage.

(3) The separation agreement shall not require or permit the division or disbursement of the moneys and income described in division (A)(2) of this section to occur in a manner that is inconsistent with the law, rules, or plan governing the deferred compensation program involved or prior to the time that the spouse in whose name the participant account is maintained commences receipt of the moneys and income credited to the account in accordance with that law, rules, and plan.

(B) An amended separation agreement may be filed at any time prior to or during the hearing on the petition for dissolution of marriage. Upon receipt of a petition for dissolution of marriage, the court may cause an investigation to be made pursuant to the Rules of Civil Procedure.

(C) If a petition for dissolution of marriage contains an authorization for the court to modify the amount or terms of spousal support provided in the separation agreement, the modification shall be in accordance with section 3105.18 of the Revised Code.

FIGURE 4.6

Key Ohio Statutory Provisions Relating to Dissolution of Marriage

Summary

The law has long tried to deal with the reality that some married couples no longer want to be married. We have moved from a time when it was very difficult to get a divorce and when all divorces had to be based on fault, to a time when all 50 states have some form of no fault divorce.

Annulments, once a common way for couples to end their marriage, allow a judge to declare that the marriage has never existed. The annulment can be granted because the marriage is void, such as a case involving bigamy, or voidable at the request of one or both of the parties, such as cases involving the lack of capacity. State laws have adjusted to provide for the legitimacy of the children born in a marriage that was subsequently ended and for the resolution of financial issues resulting from the annulment.

The law has also had to deal with societal changes that put pressure on the states to make it easier to get a divorce.

Starting in the 1970s and growing in popularity since then, no fault divorces have become the norm. The divorce can be obtained with one spouse merely alleging that there are irreconcilable differences between the parties or a similar statement in order to obtain a divorce.

The law is still playing catch-up on issues that are related to divorce, such as collection of child support, collection of alimony, child visitation, and abuse.

Key Terms

Bigamy	Fraud
Coercion	Incest
Collusion	Recrimination
Condonation	Void
Connivance	Voidable
Defense	

Review Questions

1. What is the difference between a divorce and an annulment?
2. What is the difference between void and avoidable? Why is it important in understanding annulments?
3. List the reasons why a marriage may be voidable?
4. What are some of the consequences of a divorce?
5. What are some of the consequences of an annulment?
6. What are the most common grounds for a fault divorce? How do they differ from the grounds that need to be alleged in a no fault divorce?
7. What defenses are available in a fault divorce? In a no fault divorce?
8. What defenses are available in an annulment action?
9. What are the differences between divorce and dissolution of marriage?
10. What is separation and why is it used by some married couples?

Exercises

1. Review the facts contained in the Client Interview. What legal issues are presented in those facts? Explain both what they are and the possible ways in which they could be resolved.
2. Jacob and Janice have been married for 10 years. Jacob has been incarcerated in the state penitentiary for a period of 3 years. He still has 2 years remaining to serve on his sentence. Janice wants a divorce but Jacob does not. Based on the

laws of your state, would Janice be able to get a divorce? Would it be a no fault or a fault divorce? If it would need to be a fault divorce, what would be the grounds for the divorce?

3. Ken has been married to Alicia for 2 years. One year after their marriage, Alicia was admitted to a state mental hospital after attempting to commit suicide. Ken wants a divorce. Alicia doesn't object, but her doctor feels that she is not capable of consenting to the divorce. Based on the laws of your state, would Ken be able to get a divorce? Would it be a no fault or a fault divorce? If it would need to be a fault divorce, what would be the grounds for the divorce?
4. Jan and Dorothy decide to live together. They each have assets, such as savings accounts and cars, and Jan owns the home in which the couple plans to live. Under the laws of your state, would they need a written cohabitation agreement to protect their rights if they separate or have the courts of your state protected the rights of couples who have cohabitated once they separate? If the courts of your state have protected the rights of cohabitants upon separation, what facts have they considered to determine if there were an informal agreement between the parties as to what would occur at separation?
5. Scott and Bernice have been married for 7 years. Scott is very unhappy in his marriage. He wants a divorce, feeling that the marriage is irretrievably broken. Would he be able to get a no fault divorce in your state? Would your answer be different if Bernice does not agree that the marriage is irretrievably broken? If yes, what would Scott have to do to get a divorce?



REAL WORLD DISCUSSION TOPICS

The parties divorced and, pursuant to an agreement between them, the husband began paying alimony to the wife. Payments were to continue until such time as either party died, or the wife remarried. The wife remarried, but that marriage was subsequently annulled.

Should the husband's obligation to pay alimony revive when the wife's later marriage was annulled? See *Fredo v. Fredo*, 49 Conn.Supp. 489, 894 A.2d 399 (2005); *Watts v. Watts*, 250 Neb. 38, 547 N.W.2d 466 (1996).



PORTFOLIO ASSIGNMENT

1. Review section 61.052, Florida Statutes, which is shown in Figure 4.4. Make a list of the requirements set out in that statute to get a divorce. Include what proof must be submitted, what defenses can be raised, what latitude the court has to grant the divorce, and any other item you feel is relevant. Next, locate your state's statute on this topic and make a similar list. Compare the similarities between the two statutes.
2. Review the facts from the Client Interview at the beginning of the chapter. Research the relevant statutory and case law of your state to determine what options are available to Lisa. Write a summary of your findings.