

ANNULMENT

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A. Chapter Competencies

After studying chapter 6 the student should be able to:

1. distinguish annulment, divorce, and legal separation.
2. distinguish between a void marriage and a voidable marriage.
3. identify the reason why someone would want to bring an annulment action for a marriage that is void.
4. identify the two categories of grounds for an annulment.
5. state the effect of a person being estopped from bringing an annulment action.
6. state the four legal capacity grounds for an annulment.
7. state the four intent grounds for an annulment.
8. state the bigamy (prior existing marriage) ground for an annulment.
9. state the Enoch Arden defense in a criminal case.
10. state the two major presumptions on marriages in annulment cases.
11. identify the consequences of the Enoch Arden defense in an annulment case.
12. distinguish consanguinity from affinity and determine when either can be a ground for annulment.
13. state the nonage ground for an annulment.
14. state when a physical disability can be a ground for an annulment.
15. state why a sham marriage can be annulled.
16. state when a mental disability can be a ground for an annulment.
17. state the effect of a marriage during a lucid interval by an otherwise mentally disabled person.
18. state when duress can be a ground for an annulment.
19. distinguish the essentials test from the materiality test in determining when fraud can be a ground for an annulment.
20. distinguish an intentional misrepresentation of fact, an intentional concealment of fact, a good faith nondisclosure of fact, and a good faith misrepresentation of fact.
21. state the reasons the Catholic Church will grant a church annulment.
22. state the general conflict-of-law rule in annulment cases.
23. state the possible impact of DOMA if a state ever allows same-sex marriage.
24. state the consequences of the marriage evasion statute.
25. state the current validity of a marriage that would be valid in the domiciliary state if entered there, but that was invalid in the state where it was in fact entered—the state of celebration.
26. state whether children born in an annulled marriage are legitimate, and whether alimony can be granted in an annulment action.

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27. state how the following theories have been used to provide relief to women in states where alimony cannot be awarded in annulment cases: quasi contract, partnership, joint venture, and putative spouse.
28. state whether alimony that was awarded in a divorce case but terminated upon remarriage can be revived when the second marriage is annulled.
29. state the consequences of annulment in the following areas: child custody and support, bigamy charges, interspousal tort immunity, intestacy, privilege for marital communications, workers' compensation, and tax return status.

B. Introduction

Here are some items you may want to share with the class while covering chapter 6.

Why Annulments Are Important

Ask the class if anyone should care about annulments in an era when divorce is so easy to obtain? Here are some reasons why the annulment option is still on the books of every state:

- A party may want to remarry in the Catholic Church (note, however, that such a party would also need a church annulment).
- There may have been a second marriage that a party now wants declared valid; this can happen only if the prior marriage with a living ex-spouse is invalidated by annulment. Here is an example. Mary marries Bob. She then marries Fred while Bob is still alive. She never divorced Bob. Fred dies intestate as a wealthy man. Mary wants a widow's intestate share of Fred's estate. To do this she had to have a valid marriage with Fred. This can happen only if her marriage to Bob is annulled. It doesn't help her to divorce Bob *now*. She would be eligible to remarry (e.g., to Fred) only when the divorce occurs. By this time Fred is dead. If, however, she can get her marriage to Bob annulled, the invalidity of the marriage relates back to when she entered the marriage with Bob. This would mean that technically she was not married when she entered the marriage with Fred.

Bigamy in Hungary

Current legislation in Hungary requires a man convicted of bigamy to "live with both wives simultaneously, *in the same house*." Women bigamists are not addressed.

Doris Childs, *Loony Laws*, quoted in 14 Legal Paraphernalia 6 (September/October 1994).

Fraud**Some hypotheticals for class discussion:**

- Ted sues his wife Claire for an annulment on the ground of fraud. "She tricked me," he said. "When I married her she said she was terminally ill. But she wasn't."
- Carl is suing Stephanie for an annulment, alleging that Stephanie concealed the fact that she was once a he. There had been a sex change operation.

C. Assignment 6.4 (HIV testing)

- a. This question raises the broader question of whether the class thinks that there is *any* physical disability that should disqualify someone from being allowed to marry. Recall the *Zablocki* holding that only reasonable limitations on entering marriage can be imposed by the state.
- b. If testing was a national relationship, a couple could not go to another state to marry in order to avoid taking the test. But what about going to Mexico or Canada?

D. Assignment 6.5(a) (sham marriage)

Did they intend to be married at the time of the ceremony? The answer appears to be yes. It does not appear to have been a limited purpose marriage. Philip clearly wanted to be married for the remainder of his life.

What was Elaine's purpose? Even if it was to get rich, she still wanted to be his wife. She wanted a chance to think about it after some months of trying the marriage, but isn't this impliedly true of many marriages? For all outward appearances, they were married.

E. Assignment 6.6 (*In the Interest of Melissa Miller*)

- a. The court found that Mr. Christoph did intend to marry even if his motive was to avoid prosecution. Section 204(a)(3) makes a marriage void only where one of the parties “lacked capacity to consent or did not intend to assent” to the marriage. Since here neither party lacked capacity and both intended to consent, the section is inapplicable. Melissa lacked capacity to consent to a traditional *ceremonial* marriage, but she was old enough to consent to a *common law* marriage—all you have to be is seven years old!

Nor was the marriage voidable. The only parties allowed to sue to declare the invalidity of a voidable marriage are the parties to the marriage, neither of whom in this strange case wanted the marriage to end. In Pennsylvania, a mother of a spouse-to-be cannot be a party (has no standing) to ask a court to declare the invalidity of a voidable marriage.

- b. Suppose, however that Melissa now wants an annulment once she finds out that Mr. Christoph files for a divorce the day after the police can no longer arrest him for corrupting the morals of a minor. We would need to know what grounds for annulment she would assert. A void ground or a voidable ground?

The void grounds are covered under § 204(a)(3):

- insanity
- serious mental disorder
- “or otherwise lacked capacity to consent or did not intend to assent”

The voidable grounds are covered under § 205(a):

- under age
- fraud
- duress, coercion, or force

Melissa could argue that § 204(a)(3) applies. He sought the divorce the day after he could no longer be prosecuted. This is some evidence that he never intended to marry her. She could also argue that his intent to marry was fraudulent under § 205(a) in light of his quick decision to divorce.

Melissa would have standing to raise these claims, unlike her mother, in the court opinion. Then we are faced with a question of fact. What was his intent? The timing of his decision to divorce raises serious doubts about whether he ever intended to marry Melissa.

“Accepting the lower court’s finding that Mr. Christoph married appellant to avoid prosecution, . . . such a motive does not invalidate a common law marriage.”

F. Assignment 6.7 (duress)

- a. Threat directed against a third party. This would probably be strong enough for duress, depending on the imminence of the proposed killing. If, however, it was a vague threat, a court may not find duress.
- b. No duress unless it could be shown that Tom had no will power as a result of his father’s influence.
- c. How realistic was the suicide threat? (Paula may have a difficult problem of proof here.) Was Paula’s will overcome by this threat?

G. Assignment 6.8 (marry a multimillionaire)

- a. No. The marriage was not a sham. Both parties had the full intention to marry. They told this to each other and to the millions of viewers.
- b. No-fault annulment? In divorce, the court is saying that the marriage is broken. In annulment, the court is saying that there never was a marriage. It doesn’t make sense to allow anyone for any reason (in a no-fault world) to ask a court to declare that a marriage never existed. Millions of people have the intent to marry and have the capacity to marry. The courts should not be used to allow them to pretend that they never intended to marry or never had the capacity to marry.
- c. No. Her *Playboy* appearance is not relevant to whether she fulfilled all the requirements to enter a marriage.

H. Ethics in Practice

Conflict of interest? While you were a paralegal at the law firm, you helped the firm represent Mary Smith in obtaining a legal annulment from her husband, Paul Smith. Now you are a paralegal representing Paul Smith who wants a church annulment against Mary Smith.

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Of course, the church case is not a legal proceeding. The law does not recognize or follow church court decisions. Nor does the church recognize or follow legal court decisions.

But the paralegal arguably still has a conflict of interest, whether or not Mary also wants a church annulment. If she doesn't, the conflict of interest is even clearer.

The bar association ethical rules do not apply to independent paralegals. What about the law firm where the paralegal worked? The facts do not say if the paralegal still works there. The law firm is not representing Paul Smith in the church annulment case. If the paralegal no longer works there, there is nothing the firm can do about what the paralegal is doing in the church case. What if the paralegal still works there as well as does independent paralegal on the side. This presents an awkward situation for the firm. Is the paralegal using information in the law firm's file in the paralegal's representation at the church case?

The original legal annulment case was uncontested, but the firm represented only Mary Smith. The firm cannot now let any of its resources (e.g., file information) be used against its client in another case even though the church case is not a legal case. There certainly is an appearance of impropriety if not an actual one.