



*Domestic Relations*

*Class 12*

Child Arrangements



FAMILY I

# Personal Jurisdiction in Divorce Cases

- Because of the important ramifications of divorce cases and the policy of not encouraging hasty divorces, many states have stricter requirements for jurisdiction in divorce cases than for other civil matters.
- This is also important because, once a party is divorced in one state, the other states will recognize that divorce under the Full Faith and Credit Clause.
- Common requirements include residency in the state for a certain period of time.
- Some jurisdictions have alternative requirements, which include:
  - The fact that the marriage occurred in the state.
  - The fact that the couple lived in the state during the marriage.
  - One spouse living in the state for a period of time before filing the action.



# Personal Jurisdiction in a Divorce Case – Example (New York)

CPLR 302(b):

Personal jurisdiction over non-resident defendant in matrimonial actions or family court proceedings.

A court in any matrimonial action or family court proceeding involving a demand for support, alimony, maintenance, distributive awards or special relief in matrimonial actions may exercise personal jurisdiction over the respondent or defendant notwithstanding the fact that he or she no longer is a resident or domiciliary of this state, or over his or her executor or administrator, if the party seeking support is

a resident of or domiciled in this state at the time such demand is made, provided that

this state was the matrimonial domicile of the parties before their separation, or the defendant abandoned the plaintiff in this state,

or the claim for support, alimony, maintenance, distributive awards or special relief in matrimonial actions accrued under the laws of this state or under an agreement executed in this state.

The family court may exercise personal jurisdiction over a non-resident respondent to the extent provided in sections one hundred fifty-four and one thousand thirty-six of the family court act.



# Effect of a Divorce that has been Granted by a Jurisdiction

- **Res Judicata**

- A state must recognize the validly entered divorce decree of another state, as long as both parties had sufficient opportunities to be heard.
- Thus, if you want to contest a divorce, you need to do so through the courts of the state that granted the divorce.

- ***Ex Parte* Divorce**

- A state can sometimes enter a divorce as long as it has personal jurisdiction over at least one of the parties, even if it has no jurisdiction over the other party.
- This divorce will be valid; however:
  - A state may not dispose of property or force a monetary order upon a party over which it has no personal jurisdiction.
  - It is highly questionable whether full faith and credit will force the other party's state to recognize the divorce.



# Foreign Country Divorces

- There is no principle in law or the Constitution that forces states to recognize the divorces granted in other countries.
- Foreign country divorces may be recognized by states under the principle of “comity.”
- Foreign divorces will generally not be recognized unless:
  - 1) That country’s system allows the opportunity to be heard by both parties; and
  - 2) Circumstances were such that that country’s court has a basis for jurisdiction over both parties that would be adequate under American law.



# Estoppel

- This applies to all invalid divorces
  - If a party uses an invalid divorce to his or her advantage (e.g., to remarry), that party may be “estopped” from later challenging the validity of that divorce.





QUIZ TIME!

# Grounds for Divorce

- **Historical Rule:** One or both sides had to be at “fault” for a couple to get divorced. These criteria required the allegation of specific “wrongful” actions on the part of one or both parties.
- **Modern rule:** Most states all “no fault” divorces, or at least make the “fault” grounds so vague so that they can be alleged with little trouble.



# Grounds for Divorce (cont.)

- **Common Grounds for divorce:**

- 1) Abuse/ cruel treatment (can be physical and/or emotional)
- 2) Abandonment (usually for a minimum period of time)
  - This requires moving away with the intent to desert (not just a business trip...).
  - Abandonment can also be “constructive”
- 3) Imprisonment for a period of time or felony conviction of one spouse
- 4) Adultery
- 5) “Irreconcilable” differences
  - This ground often requires a period of separation and/or various other steps that must be taken in an “attempt to save the marriage.”
- 6) Insanity or incapacity of one of the parties



# No-Fault Divorce

- **What is a "No-Fault" Divorce?**

- Many states now permit "no-fault" divorces. A no-fault divorce is one in which neither spouse blames the other for the breakdown of the marriage. Both spouses agree that "irreconcilable differences" have arisen, and that neither time nor counseling will save the marriage; it simply will not work. A "no-fault" divorce is a more humane way to end a marriage in those states that permit it.

- **Standards:**

- **New York:** live separate and apart in separate homes for a period of time.
- **California:**
  - Irreconcilable differences, which have caused the irremediable breakdown of the marriage.
  - Incurable insanity.
- **Delaware:** "irretrievably broken"
- **Uniform Marriage & Divorce Act:** "irretrievably broken"



# Grounds for Divorce Listed by State

- **No-fault states:**

- The 17 "pure" no-fault states are Arizona, California, Colorado, Florida, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, Oregon, Washington, Wisconsin, and Wyoming.
- There are 2 more no-fault states with options on separation waiting periods: 1 year in Nevada, and 2 years in Hawaii.
- There are 12 no-fault states that have "fault options": Alaska, Delaware, Georgia, Maine, Massachusetts, Mississippi, New Hampshire, New Mexico, North Dakota, Oklahoma, and South Dakota. In Tennessee, divorce due to separation is not a no-fault option if there are children in that state.



# Grounds for Divorce Listed by State (cont.)

- There are 8 states (plus the District of Columbia) that have waiting periods for no-fault divorce, but also have "fault options" with some gain for finding fault, for those who do not wish to endure the waiting period, which is only 180 days in Louisiana, 6 months in the District of Columbia, 1 year in West Virginia, 2 years for Alabama and Pennsylvania, 3 years for both Rhode Island, and Texas, and both Utah and Idaho require a 5 year wait.
- There are 3 states with fault/no-fault "exceptions": Connecticut will grant a divorce after 18 months of separation/divorce only if incompatibility is alleged. Illinois is no-fault if "irretrievable breakdown and separation" is alleged. If there are objections then 2 years of separation is needed, otherwise the waiting period is only 6 months. Ohio law states that no-fault will be denied if one party contests the grounds of incompatibility. The waiting period for a separation divorce is 1 year.
- **Fault states:**
  - There are 8 "fault" states that also permit divorce after waiting periods of 6 months or more, such as Vermont (6 months), Maryland, New York, North and South Carolina (1 year), and also Virginia (1 year) if there are children or 6 months without children. New Jersey and Arkansas have 18 month waiting periods.



# Defenses against a Divorce Action

- 1) **Collusion:** The parties intentionally set up a situation where one or the other would have grounds for divorce so that the parties would be able to get divorced.
- 2) **Condonation:** The “aggrieved” spouse voluntarily continued to live with the other spouse as husband and wife after he or she learned of the ground for divorce.
- 3) **Connivance:** One spouse “entraps” the other spouse to commit an act that would serve as a ground for divorce (usually only relevant with adultery).
- 4) **Recrimination** (very much out of favor): A court can deny a divorce to both spouses as an equitable matter, when both spouses have committed acts that are grounds for divorce.

