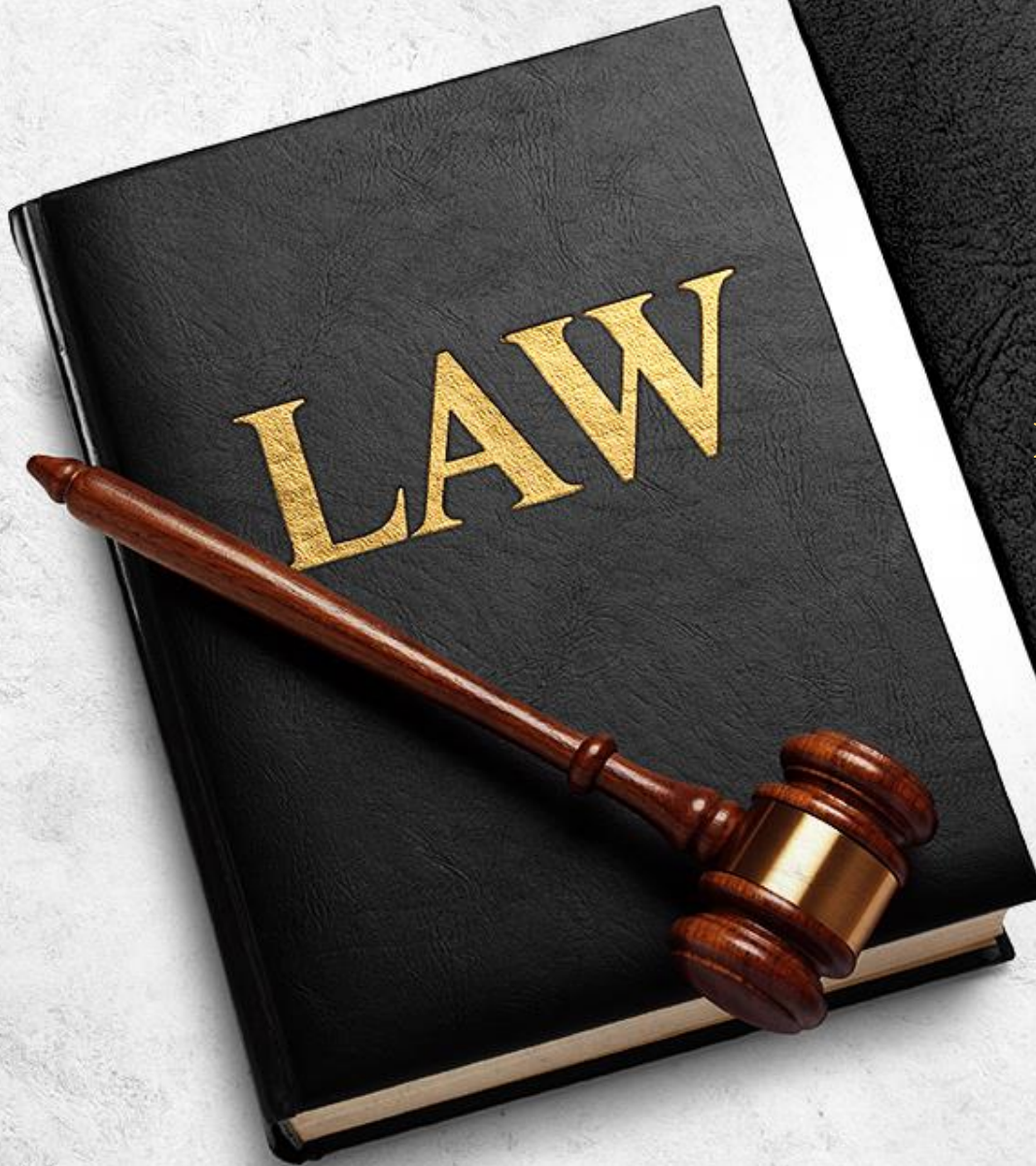


# Domestic Law

## Lecture 11

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# Annulment

- An annulment is a judgment that the marriage was never valid in the first place.

<b>DIVORCE</b>	<b>ANNULMENT</b>
1. Predicated on a valid marriage.	1. Predicated on an invalid marriage.
2. Terminates marriage as of the date of the divorce decree.	2. Terminates a marriage retroactively to the date of inception.
3. Grounds arise after the marriage.	3. Grounds exist prior to the marriage, e.g., some impediment, such as incapacity.
4. Alimony is generally granted in a divorce action.	4. Unless state statutes provide otherwise, alimony is not granted after issuance of the annulment decree.



# Annulment

- **Reasons for Granting an Annulment**
  - **Fraud:** One spouse intentionally misleads the other spouse as to a fact that was essential to the decision to marry. This must be based upon facts that are considered “essential to the marriage”.
    - **Definition: Essential purposes of the marriage are typically deemed to be sexual intercourse and procreation.**
    - Successful fraud grounds for annulment
      - Fraud about religious beliefs, fertility, sexual orientation.
    - Unsuccessful fraud grounds for annulment
      - Fraud about wealth or history.
  - **Duress**
  - **Impotency**
  - **The parties were never competent to marry in the first place**
    - Intoxication
    - Age
    - Consanguinity
    - Marital Status



# Essentials of the Marriage

- In Massachusetts fraud which induces rather than prevents consent will suffice to annul a marriage provided it "goes to the **essence of the relationship.**"
- Mere errors or mistakes concerning the character or qualities of the spouse as to personal traits or attributes or concerning the position or circumstance in life of the other party are not sufficient for an annulment of the marriage.
- Such fraudulent representations are looked upon as mere accidental qualities which do not constitute the essential and material elements on which the marriage relation rests.
- Thus, a representation of antenuptial chastity, when in fact at the time of making the statement, and entering into the marriage, the defendant was pregnant by another man constituted grounds for an annulment for fraud, as the representation directly affected her actual present condition and fitness to execute the contract.
- *Reynolds v. Reynolds*, 85 Mass. 605 (1862).



# *Radochonski v. Radochonski*

1998 Wash. App. LEXIS 765

- **Facts**

- Barbara and Anthony Radochonski were married in 1992.
- In 1994 Barbara filed a petition for dissolution and in early 1995 Anthony filed a counter-petition for an annulment.
- The trial court ruled in favor of Anthony, finding the marriage invalid on the basis of fraud in the essentials.
- The trial court's findings demonstrate that Barbara lived with David Johnson, her lover, prior to marriage.
- After marriage, she continued her relationship with Johnson, staying at his home multiple times and meeting him in Poland.
- She told Anthony that Johnson was married to another woman, and Johnson and another woman posed as husband and wife on one occasion.
- Barbara lied to Anthony about her relationship with Johnson because she wanted to marry Anthony to obtain permanent residency status.



# *Radochonski v. Radochonski*

1998 Wash. App. LEXIS 765

- **Issue**

- Did Barbara's actions go to the essentials of marriage so as to allow for an annulment?



# *Radochonski v. Radochonski*

1998 Wash. App. LEXIS 765

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- **Holding**

- No. Barbara's actions do not go to the essentials of marriage, and therefore the trial court erred in finding the marriage invalid on the basis of fraud in the essentials.
- Courts have found that when one party decides prior to the ceremony that he or she will not engage in sexual intercourse with the other after marriage, does not disclose this information to the spouse, and carries out this decision the offending spouse commits fraud in the contract of marriage.
- Courts have also found fraud in an essential of marriage when a spouse has misled the other on an attribute preventing sexual relations such as impotence, venereal disease, and narcotic abuse causing impotence.
- Anthony knew Barbara was looking for a husband so that she could remain in the United States and the trial court found that the two engaged in sexual intercourse.
- Therefore, Barbara's actions did not go to the essentials of marriage.



# *Radochonski v. Radochonski*

1998 Wash. App. LEXIS 765

- **Explanation**

- Those frauds that go to the essentials of marriage revolve around issues that would prevent consecration of the marriage by sexual intercourse.





# Annulment

- **Two types of grounds for annulment**
  - **Void:** This means that the marriage is nonexistent and **must** be undone.
  - **Voidable:** This means that one of the parties (the aggrieved party) can nullify the marriage, at his or her option. But, the marriage is not automatically void.
    - The grounds for an annulment (fraud, duress, impotency etc.) are grounds that the other party can use at his or her option. They make the marriage voidable, not automatically void.
  - Marriages that are invalid because of other grounds discussed earlier (incest, age, etc.) are void automatically, not merely “voidable.”



# Annulment

- **Defenses against Annulment**
  - **Ratification**
    - If the spouse who learns of the reason that the marriage is voidable does nothing about it and continues to live as a married couple
  - **Statute of Limitations**
  - **Bad Faith**
    - Usually, when the spouse should have known of the defect, but didn't do anything for monetary reasons, etc.



# Effect of Annulment on Others

- Clara marries and divorces Edward.
- She is awarded \$200 a month spousal support.
- A Virginia statute provides for the termination of spousal support upon Clara's remarriage.
- Three years later, Clara marries Calvin.
- That marriage is annulled because of Calvin's fraud.
- Clara petitions for reinstatement of spousal support from Edward. Will she be successful?
- No.
- The court held that annulment of a voidable second marriage does not entitle a wife to reinstatement of spousal support from the first husband provided that statutory authority exists that terminates alimony upon the recipients remarriage.
- The court reasoned that the prior husband had the right to rely on the assumption of the validity of the second marriage.
- *McConkey v. McConkey*, 215 S.E.2d 640 (Va. 1975)



# Quick Quiz



# Separation Agreements

- Separation can sometimes be a substitute for divorce, which courts encourage to avoid the expense of divorce litigation.
- In addition, a separation agreement can sometimes be a prerequisite for a divorce based on certain grounds.
- Separation Agreements can take the form of:
  - Mutual promises regarding certain financial matters.
  - Release of claims to specific property.
  - Settlement of alimony or spousal support.
- Custody or child support can be allocated by these agreements, but they will not be binding if the court feels something else is in the best interest of the child.
- The same rules apply as with other contracts, including the rules of consideration, duress, fraud, etc.



# Consideration in Separation Agreements

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- Mutual promises
  - *Chilwell v. Chilwell*, 105 P.2d 122 (1940)
- Release by one spouse of property rights of the other spouse
  - *Kirkland v. Kirkland*, 181 So. 96 (1939)
- Satisfaction of claims for alimony or spousal (but not child) support
  - *Bennett v. Bennett*, 25 P.2d 426 (1933)



# End Of Class Review Quiz

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**THE  
BIG  
QUIZ**



# The End

