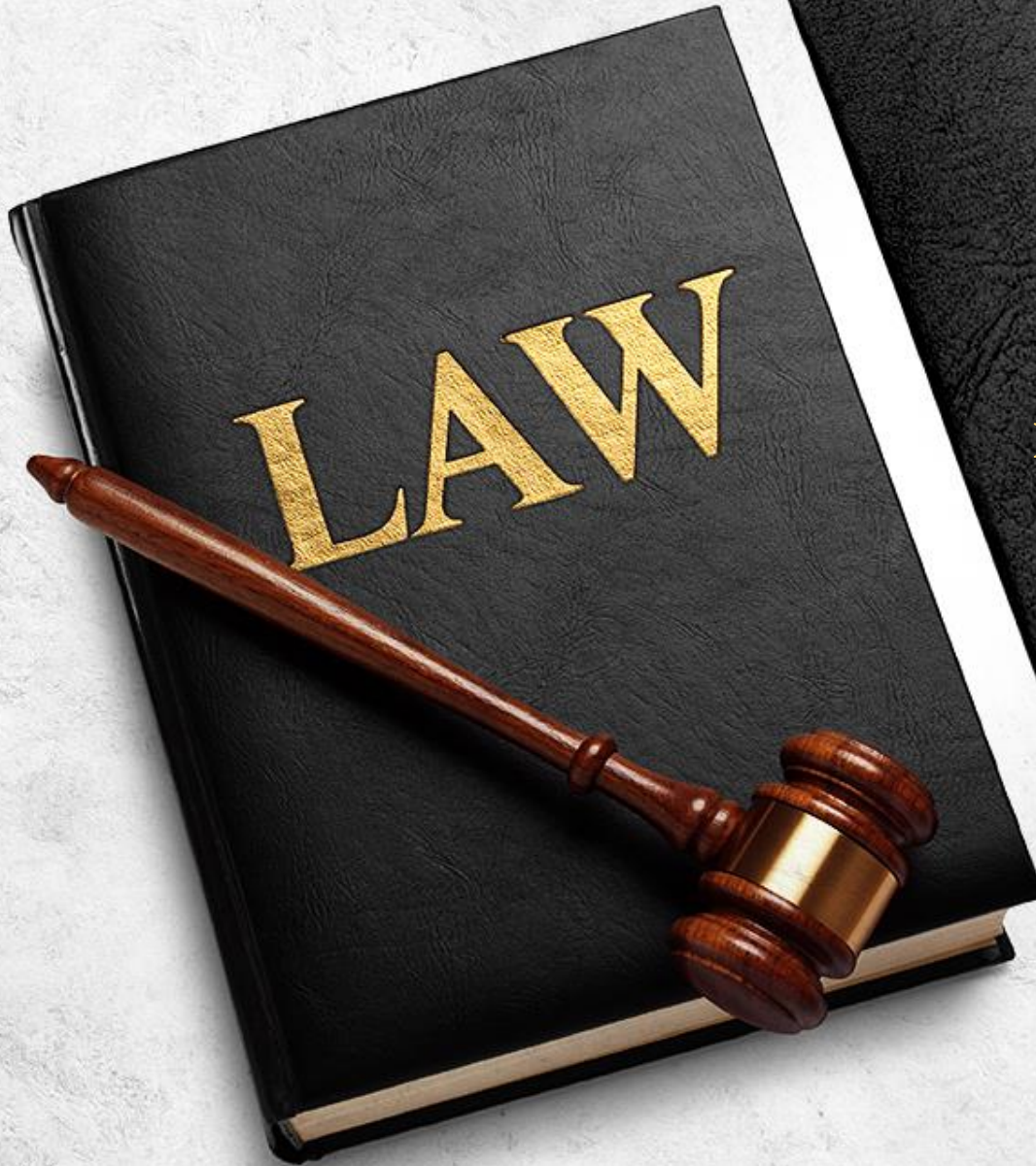


Domestic Law

Lecture 12

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Personal Jurisdiction in Divorce Cases

- Because of the important ramifications of divorce cases and the policy of discouraging 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 Divorce Case

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 Granted Divorce

- **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.
 - Also known as a "status" 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:
 - That country’s system allows the opportunity to be heard by both parties; and
 - Circumstances were such that that country’s court has a basis for jurisdiction over both parties that would be adequate under American law.
- **Estoppel**
 - (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.



Grounds for Divorce

- **Historical Rule**

- One or both sides had to be “at fault” in order to divorce. “Fault” required the proof of specific “wrongful” actions on the part of one or both parties.

- **Modern Rule**

- Most states allow “no fault” divorces; or at least make the “fault” grounds so vague so that they can be alleged with little trouble.



Grounds for Divorce

- **Abuse**/ cruel treatment (can be physical and/or emotional)
- **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”
- **Imprisonment** for a period of time or felony conviction of one spouse.
- **Adultery**
- **“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.”
- **Insanity** or incapacity of one of the parties.
- Extended period of **living separate and apart** pursuant to a court order or separation agreement



Brady v. Brady

64 N.Y.2d 339 (1985)

- **Facts**

- Edward and Dorothy were married for over twenty years and had four children together. However, their relationship began to deteriorate.
- Edward testified that Dorothy threw vases and lamps at him and would not engage in sexual relations.
- Edward moved out, and eventually filed for divorce. He also wanted the house sold and the profits split.
- Edward claimed constructive abandonment and cruel and inhuman treatment.
- Dorothy countered that she didn't abandon Edward or throw things at him. She requested maintenance and child support, but not a divorce.
- The Trial Court granted the divorce, but gave the house and custody of the kids to Dorothy.
- The Trial Court found that the marriage was 'dead.'



Brady v. Brady

64 N.Y.2d 339 (1985)

- **Facts**

- The Appellate Court modified the judgment and refused to grant the divorce.
- The Appellate Court found that Edward had not established constructive abandonment and cruel and inhuman treatment.



Brady v. Brady

64 N.Y.2d 339 (1985)

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- **Issue**
 - May a court grant a divorce when sufficient grounds have not been proven?



Brady v. Brady

64 N.Y.2d 339 (1985)

- **Holding**

- No. The New York Supreme Court affirmed the appellate court.
- The New York Supreme Court found that under New York law, a person must establish a cause of action for divorce. There were only six possible causes of action.
- The marriage being 'dead' is not a cause of action.
- The Court found that in order to establish cruel and inhuman treatment, there must be a showing of serious misconduct, not just mere incompatibility.
 - The Court noted that the longer the marriage lasted, the more serious the misconduct must be to establish cause.
- In the past, divorce was only granted when there was *fault*.
- Cases like this one demonstrate that people seeking a divorce may attempt to manipulate the system by alleging cruelty or some other grounds.
- Eventually, every State has established or found ways to rationalize *no-fault* divorce, so people aren't tempted to manipulate the system.



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"



Quick Quiz



Defenses Against a Divorce Action

- **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.
- **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.
- **Connivance:** One spouse “entraps” the other spouse to commit an act that would serve as a ground for divorce (usually only relevant with adultery).
- **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.



End Of Class Review Quiz

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**THE
BIG
QUIZ**



The End

