
Collusion is an attempt to defraud the court by obtaining a divorce where no ground for it exists. For instance, it is committed by the parties agreeing to commit adultery to create a ground for divorce.

(5) Justification

Justification is a defense to desertion. Justification is a valid defense if a party can demonstrate that, under the circumstance, she was justified in deserting the other party. Usually, a court will require a showing that the other spouse committed another ground for divorce or there was a constructive desertion.

c) No-Fault Divorce

Slightly less than half the states have abolished fault as a ground for divorce. Although the procedure varies greatly state-by-state, no-fault divorce has been universally adopted.

(1) General Standard

The terminology varies by jurisdiction. Some common statutes provide for no-fault divorce upon showings of “irreconcilable differences” (Mississippi language), “incompatibility,” “irretrievable breakdown” or “living separate and apart.” The petitioner must satisfactorily demonstrate that the marriage cannot be salvaged.

In Mississippi, no-fault divorce is extremely limited because a petition for dissolution must be joint **or** there must be personal service on the defendant. Moreover, the court must approve property settlement and child custody agreements prior to the entry of dissolution. Additionally, the court must abide by a 60 day waiting period before entering an order of dissolution.

d) Procedural Requirements for Divorce

(1) Domicile

The court must possess jurisdiction to enter a divorce decree. Most states require residency for a certain period such as 90 days to six months prior to commencement of the action. In Mississippi, one of the parties must be a resident for at least six months. However, if the court determines that a residence was acquired in this state with the purpose of securing a divorce, the court must not take jurisdiction of the action.

e) Alienation of Affections

Mississippi has not abolished the tort of alienation of affections. A cause of action of alienation of affection lies for one spouse against a third party wrongdoer who interfered with the spouse’s marital relations. The elements of an alienation of affection cause of action are: (1) wrongful conduct of the defendant; (2) loss of affection or consortium; and (3) causal connection between such conduct and the loss. *Kirk v. Koch*, 607 So. 2d 1220 (Miss. 1992).

B. Jurisdiction and Recognition of Decrees1) ANNULMENT

a) Which jurisdiction

Under the traditional rule, the state in which the marriage was entered into had jurisdiction to enter an annulment. If the parties were domiciled in another state at the time of the marriage, the state of domicile possessed jurisdiction. Under the modern majority rule, a state where either party is domiciled has jurisdiction to enter the divorce.

b) Ex Parte

Under the traditional rule, an annulment could not be entered *ex parte*. Under the modern majority rule, however, annulments can be entered *ex parte* in the state where either spouse is domiciled.

2) DIVORCE

Jurisdiction over divorces is vested solely in the state courts. Federal courts have no such jurisdiction.

a) Jurisdiction over Divorce

(1) Domicile is Critical

Under the full faith and credit clause, states must recognize and enforce a divorce granted by a court of a state if that state was the domicile of the petitioning person, regardless of whether that court had personal jurisdiction over the other spouse. A person is domiciled in the state in which he or she resides with the intent to remain indefinitely. If a divorce is collaterally attacked in another state, the only issue in that state will be whether the petitioner was in fact domiciled in the first state. If it does, then all other states must give the divorce full faith and credit, provided that the petitioner gave the other spouse constitutionally adequate notice of the divorce proceedings.

(2) Adequate Notice

Due process requires that a divorce petitioner provide adequate notice of the proceeding to the other spouse. Depending upon the circumstances, **actual** notice is not required. The inquiry is whether service was in a manner reasonably calculated to provide notice.

b) Jurisdiction over Marital Property

A state may not assert jurisdiction to divide property that is located in another state. This distinction between jurisdiction over the marriage and jurisdiction over the marital property is called the concept of “divisible divorce.”

C. Preliminary Interlocutory and Final Orders1) GENERAL

Some states grant interlocutory divorce orders. These orders are not final divorce decrees. Depending upon the statute, some jurisdictions provide that when an interlocutory order is in effect for a certain period of time, it automatically becomes final. In other jurisdictions, the court must enter a separate final decree.

2) COMMON ISSUES

An issue that may arise in this context is what occurs if a spouse dies or gets remarried during this period.

a) Remarriage

First, if a spouse gets remarried, that marriage is void as bigamous.

b) Death

It is well settled that the death of either spouse to a divorce proceeding before final decree abates the action. However, in some jurisdictions, in an action which has been bifurcated (divided into two portions – entry of divorce and division of property), if a divorce decree has been entered, the court may continue to divide the property after the death of a spouse.

D. Division of Property1) ANNULMENT

Under the traditional rule, which is the majority rule, because the marriage was treated as a nullity, no support obligation exists absent statutory authority. Some jurisdictions, however, recognize the impracticality of the traditional rule and recognize support obligations in annulled marriages. In Mississippi, if the parties entered into the marriage in good faith, the court will divide marital property upon annulment.

2) DIVORCE

a) Different Approaches

(1) Traditional Separate Property Approach

In separate property states, each spouse continues to own any property he or she owned before the marriage. Additionally, the spouse was entitled to any property she acquired during the marriage, regardless of how it was acquired (i.e., occupation, gift, inheritance, etc.). Unfortunately, the non-earning spouse was virtually property-less upon divorce.