COMMENTS

ARIZONA BECOMES THE SECOND STATE TO ADOPT THE BROAD "NEW YORK" ANNULMENT RULE

State Compensation Fund v. Foughty, 476 P.2d 902 (Ariz. App. 1970)

Claimant, a devout Lutheran, married Roy Foughty in 1947. Foughty died in 1963 as a result of an industrial accident. The Arizona Industrial Commission entered an award in claimant's favor under the workman's compensation plan providing for monthly compensation, payable until such time as she should remarry. In the event of remarriage the payments would cease, and claimant would receive one final lump sum. In 1967, she married Rhodes on his representations to her of similar religious conviction. Accordingly, the commission discontinued monthly payments, and claimant received the lump sum award. Discovering that her spouse misrepresented his religion—and that in fact he was an atheist—she sued for annulment of the marriage. Rhodes failed to defend and a judgment was entered for the claimant on the pleadings. Subsequently she petitioned the Commission for reinstatement of the payments. A hearing was conducted by the Commission to determine whether, as the State Compensation Fund urged in collateral attack, the decree of annulment was void. The Commission ruled for the claimant and ordered reinstatement of the payments. The Fund appealed to the Arizona Court of Appeals. Held: The Fund failed to meet the burden of proof in its effort to sustain its collateral attack and false and fraudulent misrepresentations of religious beliefs are a valid basis for an annulment decree.[1] With *Foughty*, Arizona becomes the second state in which a court has allowed misrepresentations during courtship of religious beliefs to be the sole ground for an annulment decree.[2]

1. State Compensation Fund v. Foughty, 476 P.2d 902, 906 (Ariz. App. 1970).

2. Fraudulent promises by one fiancé to embrace the religion of the other have long constituted good grounds for annulment in New York. *See* Taylor v. Taylor, 181 Misc. 306, 47 N.Y.S.2d 401 (Sup. Ct. 1943). A few subsequent cases have attempted to justify this under Massachusetts Rule reasoning:

> For the plaintiff v. Foughty, 476 P.2d defendant as his wife would be repugnant in every aspect of their lives together. By his acts and promises he grossly deceived her and induced her to enter a marriage based upon representations that were cruel in their falsity. . . . The fraud . . . which was to him but an empty gesture but to the plaintiff a thing of tragic implications, is so serious that the plaintiff is entitled to the relief which she seeks.

Williams v. Williams, 194 Misc. 201, 202-03, 86 N.Y.S.2d 490, 492 (Sup. Ct. 1947).

A petition for annulment requests the court's declaration that a valid marriage never existed.[3] It must generally be based upon circumstances which existed at the time of the marriage.[4] The action came into being in Great Britain under the jurisdiction of the ecclesiastical courts and was incorporated into the equity jurisdiction of courts in the United States.[5] Today an annulment action may be had "either to declare the invalidity of a marriage which was void in its inception, or to have a voidable marriage set aside."[6] Voidable marriages have ongoing validity, subject only to challenge by a spouse. Conversely, void marriages—those which are repugnant to society—may be collaterally attacked.[7] A decree of annulment has the same effect upon both void and voidable marriages: It relates back to the time of marriage contract so that, *de jure*, the marriage never existed.[8]

Authorities differ as to whether a marriage is in the nature of a contract or a status created by a contract.[9] But whichever theory is adopted, courts ultimately look to the law of contract,[10] especially the

3. F. KUCHLER, THE LAW OF MARRIAGE AND DIVORCE 32 (1961).

4. *Id.*

5. F. KUCHLER, THE LAW OF ENGAGEMENT AND MARRIAGE 51 (1966).

6. *Id.* at 52.

7. "The difference between void and voidable is so clear that no person who ever looked into any elementary book on the subject is ignorant of it. The canonical disabilities, such as consanguinuity, affinity, and certain corporeal infirmities, only make the marriage voidable, and not *ipso facto* void, until sentence of nullity be obtained; and such marriages are esteemed valid unto all civil purposes, unless such sentence is actually declared during the lifetime of the parties. Civil disabilities such as prior marriage, want of age, idiocy, and the like, make the contract void *ab initio*—not merely voidable; these do not dissolve a contract already made, but they render the parties incapable of contracting at all; they do not put asunder those who are joined together but they previously hinder the injunction; and if any person under these legal incapacities come together, it is a meretricious, and not a matrimonial union; and therefore no sentence of avoidance is necessary.

Fessenden, *Nullity of Marriage*, 13 HARV. L. REV. 110, 112-13 (1899), *quoting* Elliot v. Gurr, 2 Phillim 16 (1812). *See also* Vernon, *Annulment of Marriage: A Proposed Model Act*, 12 J. PUB. L. 143, 149 (1963). *See generally* H. CLARK, THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 35 (1968).

8. H. CLARK, THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 121 (1968). At common law, one result of an annulment was that any children born of the "marriage" were thereby bastardized. *See also* 1 BISHOP, MARRIAGE, DIVORCE AND SEPARATION 313 (1891). Today, most states have enacted laws declaring them legitimate. Rhode Island may be the only exception. *See* R.I. GEN. LAWS ANN. § 15-1-5 (1970). Clark voices his disapproval of this anachronism: "Any comment on this sort of statute would have to be disrespectful of the Rhode Island legislature and thus must be omited." H. CLARK, THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 132 n. 6 (1968).

9. Fessenden, *Nullity of Marriage*, 13 HARV. L. REV. 110 (1899). *See also* Hilton v. Roydance, 25 Utah 129, 69 P. 660 (1902).

10. *See* Southern Pacific Co. v. Industrial Comm., 91 P.2d 700, 703 (Ariz. 1939). A key difference between the contract of marriage and a commercial contract is that the parties to a marriage have no power to dissolve by mutual consent. Fessenden, *Nullity of Marriage*, 13 HARV. L. REV. 110 (1899).

requirements of assent,[11] capacity to contract,[12] contract in violation of public policy,[13] and knowledge of essential terms.[14] From these are derived the four basic grounds upon which courts will entertain a petition to annul a marriage.[15]

The broadest classification of grounds for annulment, fraud,[16] is

11. The requirement of assent appears in the RESTATEMENT OF CONTRACTS §§ 20 & 21 (1932). *But see* § 85.

12. *Id.* § 18.

13. *Id.* §§ 512-609.

14. *See* §§ 470-491 (Fraud & Misrepresentation).

15. The first, duress or lack of real consent, is derived from assent. *See* Anderson, ANNULMENT OF MARRIAGES IN MISSOURI, 21 MO. L. REV. 119, 139 (1956). *See also* Annot., 16 A.L.R. 2d 1430 (1951).

Assent being essential to a contract, it follows that a marriage founded upon duress is a nullity. While duress, if proven, will sustain an annulment, courts generally hold that marriages contracted under duress are not void *ab initio* but merely voidable. The coerced spouse may ratify the marriage by giving consent.

One party's incapacity to contract, be it physical, mental or statutory or minority, may be grounds for annulment. If the incapacity renders the marriage void, it may be attacked either directly by a spouse, or collaterally. Voidable defects of this type can be attacked directly, and then only if the incapacity was undisclosed at the time of marriage. Where the parties enter into marriage willingly, courts generally prefer the "voidable" rather than the "void" classification. *See, e.g.*, McKee v. State 452 P.2d 169 (Okla. Crim. App. 1969), where the male spouse, over age 21, was prosecuted for second-degree rape (statutory) of his 15 year old girl friend, with whom he had subsequently entered into common law marriage. In dictum, the court said that minority made a marriage voidable rather than void since they should be allowed to "ripen into legitimate relations when impediments are removed". *Id.* at 172 [*quoting* Burdine v. Burdine, 206 Okla. 170, 242 P.2d 148 (1952)]. However, the court convicted defendant and held that the marriage was void on the grounds that uncontradicted testimony casting doubt on defendant's intent to enter into common law marriage was created by the possibility that his former marriage had not been dissolved.

Bigamous marriages, and marriages between closely related individuals, are examples of unions which contravene the interests of society. In addition, a few states still have statutes forbidding miscegenation. Where existing, these statutes are similarly classified as guardians of public policy. *See* H. CLARK, THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 91 especially n. 2 (1968). *See also* Anderson, *Annulment of Marriages in Missouri*, 21 MO. L. REV. 119, 122 (1956). *But see* Loving v. Virginia, 388 U.S. 1 (1967) (antimiscegenation statutes held unconstitutional). State statutes usually designate marriages in contravention of society's interest void rather than voidable. *See* MO. REV. STAT. ANN. §§ 451.010, 451.020, 451.030, 451.040, 451.080, 451.090 (Vernon 1969). No measure of ratification by the parties in question can give them validity. For a brief comment on the statutory and court made grounds for annulment in the fifty states, Puerto Rico and the Virgin Islands, *see* F. KUCHLER, THE LAW OF ENGAGEMENT AND MARRIAGES 70-75 (1966).

16. Twenty states and the District of Columbia specifically authorize annulment by statute. H. CLARK, THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 100-01 (1968). In addition, a number of states grant the courts power to annul without specifying authorized grounds. *See* ARIZ. REV. STAT. ANN. § 25-301 (West 1956):

> Superior Courts may dissolve a marriage, and may adjudge a marriage to be null and void when the cause alleged constitutes an impediment rendering the marriage void.

Arizona judges have assumed the legislature meant voidable rather than void. This interpretation brings the statute into accord with the common law rule that fraud renders a marriage voidable rather than void. On the subject of fraud as grounds for annulment, *see generally* Kingsley, *Fraud as a Ground for Annulment of a Marriage* 18 S. CAL. L. REV. 213 (1945).

analogous to the "knowledge of essential terms" requirement in the law of contract.[17] It is unanimously agreed that fraud sufficient to support a decree of annulment renders the marriage voidable rather than void. The point of controversy is what kind of, or how much, fraud is sufficient. The textbook writings on this subject provide elaborate classification,[18] most of which can be reduced to two categories: misrepresentations as to sexual conduct, ability, or intent[19] and misrepresentations as to character. Courts are less willing to find for plaintiff in an action for annulment where the grounds are misrepresentation of character,[20] than where the grounds are misrepresentation as to sexual conduct, ability, or intent.

Regarding misrepresentations as to character, two theories have emerged. The "Massachusetts Rule"[21] holds that to be sufficient

17. *See* RESTATEMENT OF CONTRACTS §§ 470-91 (1932) (Fraud and Misrepresentation).

18. *See, e.g.*, H. CLARK, THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 110-14 (1968); F. KUCHLER, THE LAW OF ENGAGEMENT AND MARRIAGES 52-60 (1966); KEEZER ON THE LAW OF MARRIAGE AND DIVORCE §§ 221-23 (3d ed. J. Morland 1946); *See generally*, 2 J. BISHOP, COMMENTARIES ON THE LAW OF MARRIED WOMEN, ch. 26 (1876).

19. Undisclosed pregnancy, induced in the defendant spouse by a third party prior to her marriage to plaintiff spouse, is the most successful grounds for obtaining annulment. The reasons a court will give for so finding, often borderlining on legal fiction, were set down a century ago in the landmark *Reynolds* decisions:

> (1) that by reason of her pregnancy, the woman was, at least temporarily, incapacitated for bearing children to the husband and (to a lesser extent) incapacitated for marital intercourse; (2) that, unless the marriage could be set aside, the husband would be in the dilemma of either accepting as his own the child of another man or publishing to the world the disgrace of a woman whom he would still have to acknowledge and treat as his wife.

Reynolds v. Reynolds, 3 Allen (85 Mass.) 605, 609-10 (1862). As a matter of policy, courts will rarely annul either on the grounds of fraudulently concealed unchastity if no offspring resulted [*see* Kingsley, *Fraud as a Ground for Annulment of a Marriage*, 18 S. CAL. L. REV. 213, 225 (1945) especially cases cited at 225 n. 78] or on the grounds of "undisclosed pregnancy by another", where the plaintiff husband also had intercourse with the defendant out of wedlock (estoppel) (*Id.* at 216). Other cases involving prior sexual conduct include: Undisclosed venereal disease of spouse (annulment usually granted); *see* Stone v. Stone, 136 F.2d 761 (D.C. App. 1943); where defendant spouse fraudulently misrepresented his intention to have children or to engage in marital intercourse courts will generally annul. *See, e.g.*, Ferk v. Ferk, 257 Wis. 555, 44 N.W.2d 568 (1950); Bernstein v. Bernstein, 26 Conn. Supp. 239, 201 A.2d 660 (Super. Ct. 1964); Foglio v. Foglio, 157 A.2d 627 (S.C. Mun. Ct. App. 1960); Heup v. Heup, 172 N.W.2d 334 (Wis. 1969) (where the defendant's promise to have children, made prior to marriage, when her true intention was to reject any intercourse unless contraception was practiced, held: grounds for annulment).

20. "It is usually stated . . . that misrepresentations or concealment concerning the character, rank, wealth, or condition in life of the spouse are not so connected with the 'essentials' of marriage as to warrant an annulment." Kingsley, *Fraud as a Ground for Annulment of a Marriage*, 18 S. CAL. L. REV. 213, 221 (1945). For the "doctrine of essentials", *see* note 21 *infra* and accompanying text.

21. This rule, often called the "doctrine of essentials" was set down in Reynolds v. Reynolds, 85 Mass. (3 Allen) 605 (1862) (dicta). For a discussion of this, *see* 33 YALE L.J. 209 (1923). According

grounds for annulment, the fraud must "go to the 'essentials' of the marriage contract." The New York Rule[22] allows annulment for a lesser fraud:

> [T]hrough misrepresentation of some fact, which was an essential element in the giving of his consent to the contract of marriage and which was of such a nature as to deceive an ordinarily prudent person, the court is empowered to annul the marriage.[23]

Jurisdictions other than New York have held that misrepresentations during courtship as to religious belief were never the sole ground for an

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to Professor Clark, "[N]early all courts still purport to adhere to the doctrine of essentials . . . [although] the doctrine itself seems to be undergoing a change of content." H. CLARK, THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 105 (1968). *See* H. v. W., 257 A.2d 765 (Del. Super. Ct. 1969) a recent reaffirmation of the doctrine of essentials:

> Delaware adheres to the orthodox rule that only such fraud as goes to the very essentials of the marriage relation will suffice as ground for annulment. . . . Under our law, concealments and misrepresentation as to personal traits and moral character do not amount to fraud which can annul a marriage. . . . Misrepresentations of social and financial positions are insufficient. . . . Nor do false concealments and misrepresentations as to source of funds. . . . The same is true of false vows of love and affection. (citation omitted). *Id.* at 768.

See Vernon, *Annulment of Marriage: A Proposed Model Act*, 12 J. PUB. L. 143, 156-57 (1963) especially cases cited at 157 n. 52. *See also*, Louis v. Louis, 124 Ill. App. 2d 325, 260 N.E.2d 469 (1970) (fraud must go to the essentials).

22. Di Lorenzo v. Di Lorenzo, 174 N.Y. 467, 67 N.E. 63 (1903). *See* 26 WASH. U.L.Q. 274 (1941). *See also* Shonfeld v. Shonfeld, 260 N.Y. 477, 184 N.E. 60 (1933), in which the New York Court of Appeals citing Di Lorenzo v. Di Lorenzo, 174 N.Y. 467, 67 N.E. 63, said:

> Any fraud is adequate which is material to that degree that had it not been practiced, the party deceived would not have consented to the marriage . . . . and is of such a nature as to deceive an ordinarily prudent person. *Id.* at 479-80, 184 N.E. 60, 61.

See Bishop v. Bishop, 62 Misc. 2d 436, 308 N.Y.S.2d 998 (N.Y. Sup. Ct. 1970) where the New York Court reaffirmed its position that ordinary fraud in the inducement is grounds for annulment. The most likely reason for New York's unusually permissive rule is that prior to 1967, adultery was the only grounds for divorce. *See* 30 FORDHAM L. REV. 776 (1962). On the New York Rule *see generally* 24 ALBANY L. REV. 125 (1960).

23. Di Lorenzo v. Di Lorenzo, 174 N.Y. 467, 474, 67 N.E. 63, 65 (1903). The difference between the Massachusetts Rule and the New York Rule is that the former will allow annulment only when the fraud goes to the essentials of the marriage; the latter would allow it when the misrepresented fact was merely an essential element in the giving of consent.

Fraudulent promises by one fiance to embrace the religion of the other have long constituted good grounds for annulment in New York. *See* Taylor v. Taylor, 181 Misc. 306, 47 N.Y.S.2d 401 (Sup. Ct. 1943). A few subsequent cases have attempted to justify this under Massachusetts Rule reasoning:

> For the plaintiff to live with the defendant as his wife would be repugnant in every aspect of their lives together. By his acts and promises he grossly deceived her and induced her to enter a marriage based upon representations that were cruel in their falsity. . . . The fraud . . . which was to him but an empty gesture but to the plaintiff a thing of tragic implications, is so serious that the plaintiff is entitled to the relief which she seeks.

Williams v. Williams, 194 Misc. 201, 202-03, 86 N.Y.S.2d 490, 492 (Sup. Ct. 1947).

annulment decree. In other jurisdictions, religion has been the issue in only two kinds of annulment proceedings: first, courts have consistently refused to grant annulment to a Catholic whose new spouse had denied being a divorcee, even though Catholicism forbids marriage to a divorcee whose ex-spouse is still living.[24] These cases have been the subject of criticism.[25] In the second type of case courts refused to grant an annulment where the plaintiff spouse acquiesced to a civil ceremony on defendant's fraudulent promise of a subsequent religious affiliation.[26]

The fundamental differences of opinion in *Foughty* revolve around construction of the annulment statute. The concurring opinion, more clearly expressed than that of the majority, insists the statute calls for application of the Massachusetts Rule (doctrine of essentials) and that misrepresentation of religious belief is not a fraud going to the essentials of the marriage. The concurring judge could accord with the result only on procedural grounds, namely, that the Fund failed to meet its burden of proof in collateral attack.[27]

> . . . I cannot concur in the conclusion reached by my colleagues that prior false and fraudulent misrepresentations of religious beliefs is a sufficient grounds, standing alone, to sustain a decree of annulment under our statute. . . .[28] Such mental anguish and sense of loss may very well be a ground for dissolving the marriage [by divorce], but not, in my opinion, a ground for saying that marriage never existed.[29]

In contrast, the majority based its holding on a broad construction of the Arizona statute relating to annulment.[30]

> [A] person who entertains deep religious convictions and who goes

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24. *See* cases cited in 3 ARIZ. L. REV. 88, 92 n. 32 (1961).

25. *Id.* at 92.

26. *See* Akrep v. Akrep, 1 N.J. 268, 63 A.2d 253 (1949); Lamberti v. Lamberti, 272 Cal. App. 2d 482, 77 Cal. Rptr. 430 (App. Ct. 1969), where the court added a caveat that some consideration should be given to whether the marriage was sexually consummated.

27. 476 P.2d at 906. The concurring judge recognized that unless the judgment below was void, it is binding upon the Commission and may not be collaterally attacked. *See* Hallford v. Industrial Comm. of Ariz., 63 Ariz. 40, 42, 159 P.2d 305, 306 (1945). Three elements must be present or a judgment is void: "(1) jurisdiction of the subject matter of the case, (2) of the persons involved in the litigation, and (3) to render the particular judgment given." *Id.* Judge Jacobson could support the judgment in *Foughty* for the following reason alone:

> The Fund in this case failed to show exactly upon what basis the trial court entered its judgment and therefore in my opinion did not sustain its burden of establishing a valid collateral attack on the decree of annulment. 476 P.2d at 906.

28. ARIZ. REV. STAT. ANN. § 25-301 (West 1956).

29. 476 P.2d at 906-07. *See* note 36 *infra* for the Arizona divorce statute. Under this statute the grounds for divorce would not include the present case. It would appear contrary to the concurring judge's opinion, that divorce would be the only solution in this case.

30. "Superior Courts may dissolve a marriage, and may adjudge a marriage to be null and void when the cause alleged constitutes an impediment rendering the marriage void." ARIZ. REV. STAT.

> through a marriage ceremony performed by a pastor of her church then believing that the new spouse is of like religious convictions and shortly thereafter learns the falsity thereof has established a sufficient absence of mutuality to render the marriage . . . voidable, by reason of the absence of a meeting of the minds.[31]

The holding seems to conform to the New York Rule, which allows annulment for any material misrepresentation of fact inducing one party to marry the other. Like the New York Rule, the *Foughty* decision is couched in the language of simple contract: "sufficient absence of mutuality" and "voidable by reason of the absence of the meeting of the mind."[32]

Critique of the *Foughty* decision must focus on whether it is a fair interpretation of the statute, a fair treatment of the litigants, and whether it is wise precedent. First, the Arizona statute regulating annulment is sufficiently vague so as to admit of either the Massachusetts or the New York Rule.[33] The *Foughty* case, representing a significant move toward the latter, is based on reasonable construction of a vague statute.[34] Second, it must be conceded that the *Foughty* decision was an equitable one under the circumstances: a devoutly religious widow; uncontested fraud; the peculiar advantage which only an annulment would afford the claimant; and that no children were born of the marriage. The third consideration is whether the *Foughty*

ANN. § 25-301 (West 1956). "It is plain that the legislature . . . did not intend to use the word 'void' in the annulment statute in its strict sense, but rather meant 'voidable' . . ." 476 P.2d at 904, citing Southern Pac. Co. v. Industrial Comm., 54 Ariz. 1, 11, 91 P.2d 700, 704 (1939).

31. 476 P.2d at 906.

32. *Id.* There is, however, evidence of a legislative intent that the language of the statute, impediment to the marriage contract, be constued to require the application of a doctrine of essentials test. In 1887, the Arizona statute read:

> The district court shall have the power to hear and determine suits for the dissolution of marriage, where the causes alleged therefore shall be natural or incurable impotency of the body at the time of entering into the marriage contract, or any other impediment that renders such contract void. ARIZ. REV. STAT. ¶ 2110 (1887).

But in 1901, the legislature deleted the reference to impotency and placed it in the statute stating grounds for divorce, (*Id.* ¶ 3113). While courts have since refused to speculate on the exact intent for this change [*see, e.g.*, Southern Pac. Co. v. Industrial Comm. 54 Ariz. 1, 13, 91 P.2d 700, 705 (1939)], it seems likely that the legislature intended to make it more difficult to obtain an annulment.

33. The statute provides no guidelines to help the court decide how great a defect "constitutes an impediment rendering the marriage void". *See* note 16 *supra*.

34. The Arizona annulment statute, quoted in note 16 *supra*, states that a null and void marriage is one that is hampered by an impediment rendering it void. The legislature nowhere defines impediment.

construction of Arizona's annulment statute should be followed.

Although as a general rule, preservation of the family unit is in the public interest,[35] this is not true in cases where the marriage has deteriorated to such a degree that it is robbing the parties concerned of their tranquility. In these cases, there are two forms of relief, divorce and annulment, of which the former has traditionally been more readily obtainable.[36]

At common law, there are several differences between the effects of a decree of divorce and one of annulment.[37] Common law divorce proceedings provided a forum for the litigants to contest matters relating to child support, child custody, property division, and alimony.[38] Also, children of divorced marriages were considered legitimate, while those born during "marriages" which were subsequently annuled were not.[39] Today, a great majority of the states have eliminated these differences through judicial and legislative changes.[40] As a result, usually only the matter of alimony remains to distinguish the divorce proceeding from the annulment proceeding, unless it is to be argued that divorce leaves a greater residue of social stigma than annulment.[41]

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35. "Public interest and public morality alike demand that we shall never permit any loosening of the marriage save in extreme cases when grievous wrong is done to innocent persons." Fessenden, *Nullity of Marriage*, 13 HARV. L. REV. 110 (1899).

36. For instance, ARIZ. REV. STAT. ANN. § 24-312 (West 1956) lists the following grounds for divorce: (1) adultery, (2) cruelty, (3) willful desertion for a period of one year, (4) neglect for a period of one year, (5) habitual intemperance, (6) conviction of a felony, (7) separation for a period of five years or more, (8) wife pregnant at the time of marriage by another man without knowledge of the husband, (9) conviction of a felony or infamous crime prior to the marriage without knowledge of the other spouse, (10) continued physical incompetance of one spouse beginning at the time of marriage.

37. Fessenden, *Nullity of Marriage*, 13 HARV. L. REV. 110 (1899).

38. However, these matters were cognizable before the chancellor.

39. *See* note 8, *supra*.

40. *See generally* Note, *The Aftereffects of Annulment: Alimony, Property Division, Provision for Children*, 1968 WASH. U.L.Q. 148.

41. Concededly, the social stigma attendant to divorce seems to be waning. Society's acceptance of divorce has increased with the incidence of divorce in society. Traditionally, most women as a matter of simple economics have indicated a preference for divorce. *See* Foster, *Spadework for a Model Divorce Code*, 1 J. FAM. L. 11, 22 (1961). For the same reason, namely the alimony feature of divorce, most men have preferred annulment. However, modern advocates of women's liberation seem to be calling for an end to some of the things which have traditionally justified an alimony award. Women's liberation philosophy turns at least in part on the advocacy of shared housework, bringing an end to job discrimination, establishment of free daytime child care centers, and generally quashing the "helpless female" stereotype. *See* Kamisar, *A Feminist Manifesto*, READERS DIGEST 105 (Aug. 1971). Note also that recently two female legislators from the state of Maryland, one of them married and the other divorced, proposed a bill to the state legislature to create a three-year marriage contract, with an option to renew. If mutually agreeable, exercise of the option would

Since the only significant difference between divorce and annulment is alimony, it should provide the starting point for any discussion of the issue of whether to expand the grounds for annulment, and consequently whether *Foughty* is wise precedent.

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convert the agreement into a traditional marriage. *See* St. Louis Post Dispatch, Feb. 26, 1971, at 1, Col. 1. It might also be argued that the length of the marriage may be important in determining whether to grant an annulment or divorce decree.