DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF POLICY ANALYSIS
MARYLAND GENERAL ASSEMBLY

Victoria L. Gruber
Executive Director

Ryan Bishop
Director

March 15, 2018

TO WHOM IT MAY CONCERN:

CERTIFICATION OF COPY OF LEGISLATIVE RECORDS

STATE OF MARYLAND, COUNTY OF ANNE ARUNDEL, to wit:

I, Annette Haldeman, Legislative Manager, Reference Services, Library and Information Services, Office of Policy Analysis, Department of Legislative Services, General Assembly of Maryland, hereby certify and attest that materials attached hereto are true and full copies of 30 pages from Title 2, Marriage, and Title 7, Divorce, of the Family Law Article of the Annotated Code of Maryland; and that these materials are part of the records in the Library and Information Services Division; and that I am the lawful custodian of such records.

IN WITNESS WHEREOF, I have set my hand, at my office in the City of Annapolis, County of Anne Arundel, State of Maryland, this 15th day of March 2018.

Annette Haldeman
Legislative Manager, Reference Services
Library and Information Services

AH/cm

Enclosure

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DEPARTMENT OF FOREIGN AFFAIRS
Office of Legal Affairs

22 FEB 2019

JONATHAN A. HIPE
Signing Officer

TITLE 2. MARRIAGE

Subtitle 1. Definitions.

Subtitle 2. Valid Marriages; Void Marriages.

Subtitle 3. Marriage of Certain Minors.

Subtitle 4. Licensing and Performance.

Subtitle 5. Records.

SUBTITLE 1. DEFINITIONS

2-101. Definitions.

(a) *In general.*- In this title the following words have the meanings indicated.

(b) *Authorized official.*- "Authorized official" means an individual authorized by the laws of this State to perform a marriage ceremony.

(c) *Clerk.*- "Clerk" means a clerk of the circuit court for a county.

(d) *License.*- "License" means a license to marry issued in this State.

[1984, ch. 296, 2.]

Maryland Law Review. For article, "Survey of Developments in Maryland Law, 1983-84," see 44 Md. L. Rev. 536 (1985).

Recognition of same-sex marriage legally performed in other jurisdictions. - The issue as to whether a same-sex marriage legally performed in other jurisdictions would be recognized in Maryland, in the absence of legislation, would be construed according to the legal landscape against which the Court of Appeals would assess the question. The general principle is that a marriage that is valid in the place of celebration remains valid in Maryland. The exception to that rule if the particular marriage is contrary to a strong State public policy is a very limited one that the Court has seldom invoked. In addition, the Governor is not empowered to issue an executive order concerning recognition of same-sex marriages, since the Governor cannot legislate through an executive order and an executive order may not regulate the conduct of private parties not employees of the Executive Branch. 95 Op. Att'y Gen. 3 (Feb. 23, 2010).

Applied in Mendelson v. Mendelson, 75 Md. App. 486, 541 A.2d 1331 (1988).

SUBTITLE 2. VALID MARRIAGES; VOID MARRIAGES

2-201. Valid marriages.

(a) *Construction.*- This section may not be construed to invalidate any other provision of this title.

(b) *In general.*- Only a marriage between two individuals who are not otherwise prohibited from marrying is valid in this State.

[An. Code 1957, art. 62, 1; 1984, ch. 296, 2; 2012, ch. 2.]

Effect of amendments. Chapter 2, Acts 2012, effective January 1, 2013, added (a) and designated the existing language as (b); and in (b) substituted "two individuals who are not otherwise prohibited from marrying" for "a man and a woman."

Editor's note. Section 2, ch. 2, Acts 2012, provides that "an official of a religious order or body authorized by the rules and customs of that order or body to perform a marriage ceremony may not be required to solemnize or officiate any particular marriage or religious rite of any marriage in violation of the right to free exercise of religion guaranteed by the First Amendment to the United States Constitution and by the Maryland Constitution and Maryland Declaration of Rights. Each religious organization,

association, or society has exclusive control over its own theological doctrine, policy teachings, and beliefs regarding who may marry within that faith. An official of a religious order or body authorized to join individuals in marriage under 2-406(a)(2)(i) of the Family Law Article and who fails or refuses to join individuals in marriage is not subject to any fine or other penalty for the failure or refusal." The measure was approved by the voters on November 6, 2012, upholding ch. 2, Acts 2012, as enacted. The Governor certified the referendum results on December 6, 2012.

Section 3, ch. 590, Acts 2008, effective July 1, 2008, provides that "this Act may not be construed to have any effect on 2-201 of the Family Law Article."

The Department of Legislative Services has sent notice that Chapter 2, Acts 2012, has been petitioned by the requisite number of citizens to referendum in November, 2012.

Section 3, ch. 2, Acts 2012, provides that:

"(a) Notwithstanding any other provision of law, a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by a religious organization, association, or society, may not be required to provide services, accommodations, advantages, facilities, goods, or privileges to an individual if the request for the services, accommodations, advantages, facilities, goods, or privileges is related to:

"(1) the solemnization of a marriage or celebration of a marriage that is in violation of the entity's religious beliefs; or

"(2) the promotion of marriage through any social or religious programs or services, in violation of the entity's religious beliefs, unless State or federal funds are received for that specific program or service.

"(b) A refusal by an entity described in subsection (a) of this section, or of any individual who is employed by an entity described in subsection (a) of this section, to provide services, accommodations, advantages, facilities, goods, or privileges in accordance with subsection (a) of this section may not create a civil claim or cause of action or result in any State action to penalize, withhold benefits from, or discriminate against the entity or individual.

"(c) Nothing in this Act shall be deemed or construed to prohibit any religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by a religious organization, association, or society, from limiting admission to or giving preferences to individuals of the same religion or denomination when otherwise permitted by law."

Section 4, ch. 2, Acts 2012, provides that:

"(a) Notwithstanding any other provision of law, a fraternal benefit society described in 8-402 of the Insurance Article that is operated, supervised, or controlled by a religious organization may not be required to admit an individual as a member or to provide insurance benefits to an individual if to do so would violate the society's religious beliefs.

"(b) A refusal by a fraternal benefit society described in subsection (a) of this section to admit an individual as a member or to provide insurance benefits to an individual may not create a civil claim or cause of action or constitute the basis for the withholding of governmental benefits or services from the fraternal benefit society."

Section 5, ch. 2, Acts 2012, provides that "if a petition to refer this Act to the people is filed with the Secretary of State in accordance with Article XVI of the Maryland Constitution and Title 6 of the Election Law Article, and a dispute arises as to the validity or sufficiency of the signatures required to complete the referendum petition as provided under Title 6 of the Election Law Article, this Act shall not take effect until the resolution of any litigation resulting from the dispute."

The Department of Legislative Services sent notice that Chapter 2, Acts 2012, was petitioned by the requisite number of citizens to referendum in November, 2012. The measure was approved by the voters on November 6, 2012, upholding ch. 2, Acts 2012, as enacted.

Maryland Law Review. For article discussing void and voidable marriages in Maryland and their annulment, see 2 Md. L. Rev. 211 (1938).

For article discussing fifteen years of change in Maryland marriage and annulment law and domestic relations procedures, see 13 Md. L. Rev. 128 (1953).

For note discussing the legal aspects of transsexualism and sex reassignment, see 31 Md. L. Rev. 236 (1971).

For a note on a 2009 Court of Appeals decision, "Janice M. v. Margaret K.: Eliminating Same-Sex Parents' Rights To Raise Their Children By Eliminating the De Facto Parent Doctrine," see, 68 Md. L. Rev. 691 (2009).

For a note on a 2009 Court of Appeals decision, "Conaway v. Deane: To Have and to Hold, from This Day Forward - Maryland's Unfit Marriage to Federal Equal Protection Analysis," see, 68 Md. L. Rev. 957 (2009).

For a comment, "Legislating after Janice M.: The Constitutionality of Recognizing De Facto Parenthood in Maryland," see, 70 U. Md. L. Rev. 525 (2011).

University of Baltimore Law Review. For comment, "Something Old, Something New, Something Borrowed, Something Long Overdue: The Evolution of a 'Sexual Orientation-Bind' Legal System in Maryland and the Recognition of Same-Sex Marriage," see, 35 U. Balt. L. Rev. 73 (2005).

For a comment, "Civil Unions Under the Maryland Era: How the Illusion of Equality Is an Equal Rights Avoidance," see, 38 U. Balt. L. Rev. 305 (2009).

For a comment, "Needlessly Fighting an Uphill Battle: Extensive Estate Planning Complications Faced by Gay and Lesbian Individuals, Including Drastic Resort to Adult Adoption of Same-Sex Partners, Necessitate Revision of Maryland's Intestacy Law to Provide Heir-at-Law Status for Domestic Partners," see, 40 U. Balt. L. Rev. 495 (2011).

For a comment, "The Case of Two Biological Intended Mothers: Illustrating the Need to Statutorily Define Maternity in Maryland," see, 42 U. Balt. L. Rev. 365 (2013).

University of Baltimore Law Forum. For article, "Same Sex Marriage: Is Maryland Ready?," see, 35 U. Balt. L.F. 128 (2005).

For 2006 development, "Duckworth v. Deane: Denial of Intervention in a Constitutional Challenge of Maryland Code, Section 2-201 of the Family Law Article Is Appropriate When the Parties Attempting to Intervene Do Not Meet the Requirements of the Rules for Intervention of Right or Permissive Intervention," see, 37 U. Balt. L.F. 48 (2006).

For a 2013 Development, "Port v. Cowan: When Applying Maryland's Domestic Divorce Law, a Valid Same-Sex Marriage Performed Out-Of-State is Recognized as Legitimate in Maryland Under the Doctrine of Comity," see, 42 U. Balt. L. F. 102 (2013).

For a 2013 development, "*Tshiani v. Tshiani*: Under the Doctrine of Comity, Maryland Recognizes a Validly Performed Foreign Marriage Conducted by Proxy or Telephone; Marriages by Proxy or Telephone Are Not Prohibited by Statute or Repugnant to Maryland Public Policy," see, 43 U. Balt. L. F. 189 (2013).

Due process. - State's legitimate interests in fostering procreation and encouraging the traditional family structure in which children were born were related reasonably to the means employed by this section, and the statute did not violate art. 24 of the Declaration of Rights. Conaway v. Deane, 401 Md. 219, 932 A.2d 571 (2007).

Section does not draw impermissible sex-based distinction under the Equal Rights Amendment. - As art. 46 of the Declaration of Rights was not intended by the General Assembly and the Maryland voters who enacted and ratified, respectively, the Maryland Equal Rights Amendment in 1972 to

reach classifications based on sexual orientation, this section does not draw an impermissible sex-based distinction under art. 46 of the Declaration of Rights. The statute prohibits equally both men and women from the same conduct. Conaway v. Deane, 401 Md. 219, 932 A.2d 571 (2007).

Same sex was former impediment. - Sameness of sex of parties constitutes legal impediment to marriage. 57 Op. Att'y Gen. 71 (1972).

Intervention on issue of same-sex marriage prior to change of law. - When court clerks were sued for refusing to issue marriage licenses to same-sex couples, another court clerk, eight legislators, and a citizen were not entitled to intervene, under Md. R. 2-214, because (1) under 6-106(b) and (c) of the State Government Article, the court clerk had to be represented by the Attorney General, who was already involved in the case, so the clerk could not intervene with private counsel; (2) the citizen did not have a unique interest giving her standing; and (3) the legislators also lacked standing. The Declaratory Judgment Act, 3-405(a) of the Courts Article, did not allow them to intervene because they had no interest affected by a declaration, under 3-405(a)(1) of the Courts Article; and, if any of these putative intervenors met Md. R. 2-214(a)(2)'s "interest" requirement, they did not show the existing parties might not represent their interests. Duckworth v. Deane, 393 Md. 524, 903 A.2d 883 (2006).

Recognition of same-sex marriage legally performed in other jurisdictions. - The issue as to whether a same-sex marriage legally performed in other jurisdictions would be recognized in Maryland, in the absence of legislation, would be construed according to the legal landscape against which the Court of Appeals would assess the question. The general principle is that a marriage that is valid in the place of celebration remains valid in Maryland. The exception to that rule if the particular marriage is contrary to a strong State public policy is a very limited one that the Court has seldom invoked. In addition, the Governor is not empowered to issue an executive order concerning recognition of same-sex marriages, since the Governor cannot legislate through an executive order and an executive order may not regulate the conduct of private parties not employees of the Executive Branch. 95 Op. Att'y Gen. 3 (Feb. 23, 2010).

Valid out-of-state same-sex marriage of the parties, which was validly performed in California, was not "repugnant" to Maryland public policy for purposes of comity under lex loci celebrationis, as it was not considered a void marriage in Maryland under 2-202 of this subtitle, despite that at the time of the action, only a marriage between a man and a woman could be solemnized in Maryland under this section. Port v. Cowan, 426 Md. 435, 44 A.3d 970 (2012).

Licensing of same-sex marriage, effective date, and waiting period. - Where the law providing for same-sex marriage was approved by the voters with the Governor's proclamation on December 6, 2012, court clerks were authorized to issue licenses after the proclamation date but labeled as effective January 1, 2013, the effective date of the act. Licenses issued up to December 30, 2012, could be issued effective January 1, 2013, but licenses could not be issued prior to January 1, 2013, if the license did not specify an effective date; any licenses issued later than December 30, 2012, would be subject to the usual waiting period in 2-405 of the Family Law Article, after which time the license is valid for six months to authorize the ceremony. Under Maryland law, it is the ceremony, not the license, that validates the marriage. 97 Op. Att'y Gen. 72 (Aug. 23, 2012).

Out-of-state marriage or civil union. - Same-sex couple with valid out-of-state marriage ineligible for license to marry in Maryland, as Maryland recognizes the validity of the out-of-state marriage; however, where a same-sex couple entered into an out-of-state civil union, the couple may now obtain a marriage license in Maryland. 97 Op. Att'y Gen. 72 (Aug. 23, 2012).

Form of vows. - Clerks should offer variety of text for vows for same-sex couples, and although the clerks may lawfully offer each couple the opportunity to select from various sets of vows, the clerks and Administrative Judges must avoid labels such as "standard" and "alternative" vows that would effectively stigmatize one set or the other. 97 Op. Att'y Gen. 72 (Aug. 23, 2012).

2-202. Marriages within certain degrees of relationship void; penalties.

(a) *In general.*- Any marriage performed in this State that is prohibited by this section is void.

(b) *Marriages within 3 degrees of direct lineal consanguinity or within first degree of collateral consanguinity prohibited; penalties.*-

(1) An individual may not marry the individual's:

(i) grandparent;

(ii) parent;

(iii) child;

(iv) sibling; or

(v) grandchild.

(2) An individual who violates any provision of this subsection is guilty of a misdemeanor and on conviction is subject to a fine of $1,500.

(c) *Certain marriages within other degrees of affinity or consanguinity prohibited; penalties.*-

(1) An individual may not marry the individual's:

(i) grandparent's spouse;

(ii) spouse's grandparent;

(iii) parent's sibling;

(iv) stepparent;

(v) spouse's parent;

(vi) spouse's child;

(vii) child's spouse;

(viii) grandchild's spouse;

(ix) spouse's grandchild; or

(x) sibling's child.

(2) An individual who violates any provision of this subsection is guilty of a misdemeanor and on conviction is subject to a fine of $500.

[An. Code 1957, art. 27, 390, 391; art. 62, 1, 2; 1984, ch. 296, 2; 2002, ch. 424; 2012, ch. 2.]

Effect of amendments. Chapter 2, Acts 2012, effective January 1, 2013, rewrote (b)(1) and (c)(1); deleted (b)(2) and (c)(2) and redesignated accordingly.

Editor's note. The Department of Legislative Services sent notice that Chapter 2, Acts 2012, was petitioned by the requisite number of citizens to referendum in November, 2012. The measure was

approved by the voters on November 6, 2012, upholding ch. 2, Acts 2012, as enacted. The Governor certified the referendum results on December 6, 2012.

See notes to 2-201 of this subtitle.

Maryland Law Review. For article discussing void and voidable marriages in Maryland and their annulment, see 2 Md. L. Rev. 211 (1938).

For article discussing fifteen years of change in Maryland marriage and annulment law and domestic relations procedures, see 13 Md. L. Rev. 128 (1953).

University of Baltimore Law Review. For a comment, "Needlessly Fighting an Uphill Battle: Extensive Estate Planning Complications Faced by Gay and Lesbian Individuals, Including Drastic Resort to Adult Adoption of Same-Sex Partners, Necessitate Revision of Maryland's Intestacy Law to Provide Heir-at-Law Status for Domestic Partners," see, 40 U. Balt. L. Rev. 495 (2011).

University of Baltimore Law Forum. For a 2013 Development, "Port v. Cowan: When Applying Maryland's Domestic Divorce Law, a Valid Same-Sex Marriage Performed Out-Of-State is Recognized as Legitimate in Maryland Under the Doctrine of Comity," see, 42 U. Balt. L. F. 102 (2013).

For a 2013 development, "*Tshiani v. Tshiani*: Under the Doctrine of Comity, Maryland Recognizes a Validly Performed Foreign Marriage Conducted by Proxy or Telephone; Marriages by Proxy or Telephone Are Not Prohibited by Statute or Repugnant to Maryland Public Policy," see, 43 U. Balt. L. F. 186 (2013).

Construction of incest statute. - The Maryland incest statute, Art. 27, 335 of the Code (now 3-323 of the Criminal Law Article), which refers to the Maryland marriage statute, should be construed to include relatives of the whole and half blood. Tapscott v. State, 106 Md. App. 109, 664 A.2d 42 (1995).

Prohibitions apply to both half-blood and full-blood relations. - This section applies to the relationships therein enumerated regardless of whether half-blood or whole-blood relatives are involved; thus, this section (and therefore 3-323 of the Criminal Law Article) prohibits marriages between half-blood relations to the same degree as full-blood relations. Tapscott v. State, 343 Md. 650, 684 A.2d 439 (1996).

Defendant's contention that the General Assembly's mention of half-blood relations in 1-204 of the Estates and Trusts Article implies that they also intended to exclude such relationships from the prohibitions of this section was rejected. Tapscott v. State, 343 Md. 650, 684 A.2d 439 (1996).

Foreign same-sex marriage recognized. - Valid out-of-state same-sex marriage of the parties, which was validly performed in California, was not "repugnant" to Maryland public policy for purposes of comity under lex loci celebrationis, as it was not considered a void marriage in Maryland under this section, despite that at the time of the action, only a marriage between a man and a woman could be solemnized in Maryland under 2-201 of this subtitle. Port v. Cowan, 426 Md. 435, 44 A.3d 970 (2012).

Cited in Conaway v. Deane, 401 Md. 219, 932 A.2d 571 (2007); Robinson v. State, 404 Md. 208, 946 A.2d 456 (2008); Tshiani v. Tshiani, 208 Md. App. 43, 56 A.3d 311 (2012); Morris v. Goodwin, 230 Md. App. 395, 148 A.3d 63 (2016).

SUBTITLE 3. MARRIAGE OF CERTAIN MINORS

2-301. Marriage of individual 16 or 17 years old; marriage of individual under the age of 16 years.

(a) *Marriage of individual 16 or 17 years old.*- An individual 16 or 17 years old may not marry unless:

(1) the individual has the consent of a parent or guardian and the parent or guardian swears that the individual is at least 16 years old; or

(2) if the individual does not have the consent of a parent or guardian, either party to be married gives the clerk a certificate from a licensed physician, licensed physician assistant, or certified nurse practitioner stating that the physician, physician assistant, or nurse practitioner has examined the woman to be married and has found that she is pregnant or has given birth to a child.

(b) *Marriage of individual 15 years old.*- An individual 15 years old may not marry unless:

(1) the individual has the consent of a parent or guardian; and

(2) either party to be married gives the clerk a certificate from a licensed physician, licensed physician assistant, or certified nurse practitioner stating that the physician, physician assistant, or nurse practitioner has examined the woman to be married and has found that she is pregnant or has given birth to a child.

(c) *Marriage of individual under the age of 15 years.*- An individual under the age of 15 may not marry.

[An. Code 1957, art. 62, 9; 1984, ch. 296, 2; 1999, ch. 231; 2008, chs. 232, 233; 2013, chs. 273, 274.]

Effect of amendments. Chapters 273 and 274, Acts 2013, effective October 1, 2013, made identical changes. Each in (a)(2) and (b)(2) added "licensed physician assistant" and "physician assistant."

Editor's note. Section 2, ch. 231, Acts 1999, provides that "this Act shall apply only to marriage applications filed on or after October 1, 1999."

Maryland Law Review. For article discussing void and voidable marriages in Maryland and their annulment, see 2 Md. L. Rev. 211 (1938).

For comment discussing marriage age law, see 3 Md. L. Rev. 340 (1939).

Provisions for minors directory. - Provisions governing marriages of 16 and 17 year olds are directory. Picarella v. Picarella, 20 Md. App. 499, 316 A.2d 826 (1974).

Marriage in violation of provisions valid. - A marriage in violation of any provision governing the marriage of 16 or 17 year olds, whether as to the age of the parties or as to parental consent, is valid and neither void nor voidable. Picarella v. Picarella, 20 Md. App. 499, 316 A.2d 826 (1974).

Emancipation with respect to matters concerning pregnancy. - A female minor over 16 years of age is emancipated from the control of the parents with respect to matters concerning pregnancy. In re Smith, 16 Md. App. 209, 295 A.2d 238 (1972).

Stated in BJ's Wholesale Club, Inc. v. Rosen, 435 Md. 714, 80 A.3d 345 (2013).

Cited in McIntyre v. State, 309 Md. 607, 526 A.2d 30 (1987); Conaway v. Deane, 401 Md. 219, 932 A.2d 571 (2007).

2-302. Penalties.

A person who violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $250.

[An Code 1957, art. 62, 11; 1984, ch. 296, 2.]

Prosecution for conspiracy to violate provisions governing marriage of minors. - See Greenwald v. State, 221 Md. 245, 157 A.2d 119, appeal dismissed, 363 U.S. 721, 80 S. Ct. 1599, 4 L. Ed. 2d 1521 (1960).

SUBTITLE 4. LICENSING AND PERFORMANCE

2-401. License required; penalty.

(a) *License required.*- An individual may not marry in this State without a license issued by the clerk for the county in which the marriage is performed.

(b) *Penalty.*- Any individual who violates this section is guilty of a misdemeanor and on conviction is subject to a fine of $100.

[An. Code 1957, art. 27, 395; art. 62, 4; 1984, ch. 296, 2.]

Regulative purposes deemed important. - Regulative purposes of license statute are useful and important, but they are sought to be enforced by pecuniary penalties pronounced against those taking part in the unlicensed marriages, and not by the radical process of rendering void and immoral a matrimonial union otherwise validly contracted and solemnized. Feehley v. Feehley, 129 Md. 565, 99 A. 663 (1917).

When court clerks were sued for refusing to issue marriage licenses to same-sex couples, another court clerk was not entitled to intervene, under Md. R. 2-214, with private counsel by claiming the interests he asserted were personal because his asserted interest based on his authority to issue marriage licenses, under 2-401 and 2-402 of this subtitle, showed those interests were based on his official duties, and under 6-106(b) and (c) of the State Government Article, he had to be represented by the Attorney General, who was already involved in the case. Duckworth v. Deane, 393 Md. 524, 903 A.2d 883 (2006).

Failure to secure license does not render marriage void. - A marriage otherwise validly contracted and celebrated shall not be void if the prescribed license shall not have been procured. Feehley v. Feehley, 129 Md. 565, 99 A. 663 (1917).

Failure to secure license does not render marriage void, as licensing provisions directory, not mandatory. - The statutory licensing provisions in this State are directory and not mandatory, so that a marriage performed without a license is nevertheless valid. Picarella v. Picarella, 20 Md. App. 499, 316 A.2d 826 (1974).

Common law marriage from foreign jurisdiction recognized. - Where a couple were married in Iowa before the woman's Virginia divorce had become final but thereafter lived as man and wife for a year in the District of Columbia, where common law marriages are valid, it was held that Maryland will recognize the common-law marriage although such marriages are not valid in Maryland. Henderson v. Henderson, 199 Md. 449, 87 A.2d 403 (1952).

Married woman not required to adopt husband's surname. - There is no statutory requirement in this State, that a married woman adopt her husband's surname. Stuart v. Board of Supvrs. of Elections, 266 Md. 440, 295 A.2d 223 (1972).

Applied in Mendelson v. Mendelson, 75 Md. App. 486, 541 A.2d 1331 (1988).

Quoted in Conaway v. Deane, 401 Md. 219, 932 A.2d 571 (2007).

2-402. Application for license.

(a) *When and where made.*- An applicant for a license may apply to the clerk only at the office of the clerk during regular office hours.

(b) *Information required.*- Except as provided in subsection (d) of this section, to apply for a license, 1 of the parties to be married shall:

(1) appear before the clerk and give, under oath, the following information, which shall be placed on an application form by the clerk:

(i) the full name of each party;

(ii) the place of residence of each party;

(iii) the age of each party;

(iv) whether the parties are related by blood or marriage and, if so, in which degree of relationship;

(v) the marital status of each party; and

(vi) whether either party was married previously, and the date and place of each death or judicial determination that ended any former marriage;

(2) sign the application form; and

(3) provide the clerk with the Social Security number of each party who has a Social Security number.

(c) *Social Security numbers.*- The Social Security numbers of the parties:

(1) shall be included in the electronic file for the marriage license application; and

(2) except as provided in 4-334 of the General Provisions Article, may not be disclosed as part of the public record of the marriage license application.

(d) *Parties not residents of county.*- If the parties to be married are not residents of the county where the marriage ceremony is to be performed, the clerk shall accept, instead of the application specified in subsection (b) of this section, an affidavit from 1 of the parties to be married. The affidavit shall:

(1) contain the information required by subsection (b) of this section; and

(2) be sworn to under oath before a clerk or other comparable official in the county, state, province, or country where the party resides.

(e) *Disclosure of application for license prohibited.*- Until a license becomes effective, a clerk may not disclose the fact that an application for a license has been made except to the parent or guardian of a party to be married.

[An. Code 1957, art. 62, 6, 7; 1984, ch. 296, 2; 1988, ch. 123, 1, 2; 1992, ch. 22, 1; 1997, ch. 609, 1; 1999, ch. 336, 2; 2003, ch. 120; 2004, ch. 25; 2014, ch. 104, 2; 2016, ch. 125.]

Effect of amendments. Section 2, ch. 104, Acts 2014, effective October 1, 2014, substituted " 4-334 of the General Provisions Article" for " 10-617 of the State Government Article" in (c)(2).

Chapter 125, Acts 2016, effective October 1, 2016, substituted "subsection (d)" for "subsections (d) and (e)" in the introductory language of (b) and deleted (e) and redesignated accordingly.

Editor's note. Section 3, ch. 123, Acts 1988, provides that "this Act applies to any of the specified documents filed with or completed by a clerk of court after July 1, 1988."

Section 3, ch. 336, Acts 1999, provides that "a license issued before October 1, 1999, remains as valid as if this Act had not been enacted."

Maryland Law Review. For note discussing the legal aspects of transsexualism and sex reassignment, see 31 Md. L. Rev. 236 (1971).

Statement taken in Cecil County for use in another county permitted. - The clerk of the Circuit Court for Cecil County may take the sworn statement of one of the parties to be married in Cecil County for use in another county. 62 Op. Att'y Gen. 175 (1977).

Statements executed in other jurisdictions for use in Cecil County not accepted. - The clerk of the Circuit Court for Cecil County may not accept nonresident statements executed in other jurisdictions where the contracting parties are to be married in Cecil County. 62 Op. Att'y Gen. 175 (1977).

Perjury growing out of application for license. - See State v. Floto, 81 Md. 600, 32 A. 315 (1895).

Clerk's official duties. - When court clerks were sued for refusing to issue marriage licenses to same-sex couples, another court clerk was not entitled to intervene, under Md. R. 2-214, with private counsel by claiming the interests he asserted were personal because his asserted interest based on his authority to issue marriage licenses, under 2-401 and 2-402 of this subtitle showed those interests were based on his official duties, and under 6-106(b) and (c) of the State Government Article, he had to be represented by the Attorney General, who was already involved in the case. Duckworth v. Deane, 393 Md. 524, 903 A.2d 883 (2006).

Stated in Conaway v. Deane, 401 Md. 219, 932 A.2d 571 (2007).

2-403. Forms of license and certificates.

(a) *Form of license.*-

(1) A license shall read substantially as follows:

"State of Maryland and County of ..... To any individual authorized by the laws of this State to perform a marriage ceremony. You are hereby authorized to join together in matrimony according to the rules and ceremonies of your church, society or religious sect and the laws of this State, or according to the laws of this State, the following individuals:

.....

(state here name of intended husband)

.....

(state here name of intended wife)

Given under my hand and seal of the Circuit Court for ....., this ..... day of ..... (state here month and year)."

(2) A license shall contain:

(i) appropriate spaces in which the clerk shall enter:

1. the relationship of the parties to be married, if any; and

2. as to each party, the name, age, state or foreign country in which born, residence, and marital status (single, widowed, or divorced); and

(ii) a statement that the license is valid only:

1. for 6 months from the effective date and time stated on the license; and

2. in the county in which it is issued.

(b) *Certificate forms.-*

(1) Attached to a license shall be 2 certificate forms that:

(i) read, "I hereby certify that on this ..... day of ..... (state here month and year), ... (state here time), at ..... (state here location), in accordance with the license issued by the Clerk of the Circuit Court for ..... (state here jurisdiction), I united in marriage the following individuals:

.....

(state here name of husband)

.....

(state here name of wife)";

(ii) restate all information concerning the individuals married that is stated on the marriage license; and

(iii) provide a space for the signature of the authorized official who performs the marriage ceremony.

(2) Attached to a license, in the case of a Society of Friends marriage ceremony, shall be 2 certificate forms that:

(i) read, "We hereby certify that on this ..... day of ..... (state here month and year), ... (state here time), at ..... (state here location), we, ... (state here name of husband) and ..... (state here name of wife) were united in marriage in accordance with the ceremony of the Society of Friends and in accordance with the license issued by the Clerk of the Circuit Court for ..... (state here jurisdiction)";

(ii) restate all information concerning the individuals married that is stated on the marriage license; and

(iii) provide spaces for the signatures of the parties and the 2 overseers of the marriage ceremony.

[An. Code 1957, art. 62, 4, 5; 1984, ch. 296, 2; 1988, ch. 123, 2; 1999, ch. 336, 2; 2000, ch. 61; 2003, ch. 120.]

Editor's note. Section 3, ch. 123, Acts 1988, provides that "this Act applies to any of the specified documents filed with or completed by a clerk of court after July 1, 1988."

Section 3, ch. 336, Acts 1999, provides that "a license issued before October 1, 1999, remains as valid as if this Act had not been enacted."

2-404. Fees for licenses.

(a) *License fee.-*

(1) The fee for a license is $10.

(2) The clerk shall:

(i) retain $5 of the fee; and

(ii) pay $5 of the fee into the general fund of the county.

(3) (i) A party to be married may obtain a replacement for a valid marriage license while the license is valid.

(ii) The fee for a replacement license is $10, payable into the General Fund of the State.

(b) *Additional license fee for battered spouse shelters and domestic violence programs - Authorized.-* Except as otherwise provided in this section:

(1) any county or group of 2 or more counties may set an additional fee of up to $25 for each license; and

(2) the proceeds shall be used to fund domestic violence programs.

(c) *Additional license fee for battered spouse shelters and domestic violence programs - Anne Arundel County.*- In Anne Arundel County:

(1) the County Council may set by ordinance an additional fee of up to $45 for each license;

(2) the clerk shall pay the proceeds from the additional fee to the general fund of the county each month; and

(3) the County Council shall distribute the proceeds to promote or fund domestic violence programs.

(d) *Additional license fee for battered spouse shelters and domestic violence programs - Baltimore City.*- In Baltimore City:

(1) the Mayor and City Council shall set by resolution an additional fee of up to $75 for each license;

(2) the clerk shall pay the proceeds from the additional fee to the Mayor and City Council each month; and

(3) the proceeds shall be used to fund domestic violence programs that have 24-hour intake ability.

(e) *Additional license fee for battered spouse shelters and domestic violence programs - Baltimore County.*- In Baltimore County:

(1) in addition to the fee authorized under subsection (b)(1) of this section, the County Council may set by resolution an additional fee of up to $15 for each license;

(2) the clerk shall pay the proceeds from the additional fee to the Director of Finance of the county each month;

(3) the proceeds, in addition to designated federal, State, and county funds, shall be used to fund battered spouse shelters and domestic violence programs established under Title 4, Subtitle 5 of this article; and

(4) the County Executive shall prepare and make available an annual report on or before December 1 of each year on the disposition of fees collected under this subsection during the previous fiscal year.

(f) *Additional license fee for battered spouse shelters and domestic violence programs - Calvert County.*- In Calvert County:

(1) the Board of County Commissioners may set an additional fee of up to $55 for each license;

(2) the clerk shall pay the proceeds from the additional fee to the County Commissioners each month; and

(3) the proceeds shall be used to fund battered spouse shelters and domestic violence programs in Calvert County.

(g) *Additional license fee for battered spouse shelters and domestic violence programs - Cecil County.*- In Cecil County:

(1) the Board of County Commissioners shall set an additional fee of $20 for each license;

(2) the clerk shall pay the proceeds from the additional fee to the County Treasurer each month;

(3) the proceeds in addition to designated federal funds and county funds shall be given to the Cecil County Department of Social Services Advisory Board to be used to fund battered spouse shelters and domestic violence programs; and

(4) the Cecil County Department of Social Services Advisory Board shall prepare and make available to the Board of County Commissioners an annual report on or before December 1 of each year of the disposition of fees collected under this subsection during the previous fiscal year.

(h) *Additional license fee for battered spouse shelters and domestic violence programs - Charles County.*- In Charles County:

(1) the Board of County Commissioners may set an additional fee of up to $35 for each license;

(2) the clerk shall pay the proceeds from the additional fee to the County Commissioners each month; and

(3) the proceeds shall be used to fund domestic violence programs located in Charles County.

(i) *Additional license fee for battered spouse shelters and domestic violence programs - Frederick County.*- In Frederick County:

(1) the Board of County Commissioners may set an additional fee, in an amount not to exceed $65, for each license;

(2) the clerk shall pay the proceeds from the additional fee to the County Commissioners each month; and

(3) the proceeds, in addition to designated federal, State, and county funds, shall be used to fund domestic violence programs established under Title 4, Subtitle 5 of this article.

(j) *Additional license fee for battered spouse shelters and domestic violence programs - Garrett County.*- In Garrett County:

(1) the Board of County Commissioners may set an additional fee of up to $40 for each license;

(2) the clerk shall pay the proceeds from the additional fee to the County Commissioners each month; and

(3) the proceeds shall be used to fund domestic violence programs in Garrett County.

(k) *Additional license fee for battered spouse shelters and domestic violence programs - Harford County.*- In Harford County:

(1) the County Council may set by resolution an additional fee of up to $40 for each license;

(2) the clerk shall:

(i) retain 3% of the proceeds from the additional fee for processing;

(ii) pay $5 of the proceeds from each license to the Harford County Sexual Assault/Spousal Abuse Resource Center, Inc.; and

(iii) pay the remaining proceeds to the Treasurer of Harford County each month;

(3) the county:

(i) shall use the proceeds, in addition to designated federal, State, and county funds, to fund battered spouse shelters and domestic violence programs; and

(ii) may make in-kind contributions to battered spouse and domestic violence programs; and

(4) the County Executive shall prepare and make available an annual report on or before December 1 of each year on the disposition of fees collected under this subsection during the previous fiscal year.

(l) *Additional license fee for battered spouse shelters and domestic violence programs - Howard County.*- In Howard County:

(1) the County Council may set by resolution an additional fee of up to $50 for each license;

(2) the clerk shall pay the proceeds from the additional fee to the Director of Finance of the county each month;

(3) the proceeds, in addition to designated federal, State, and county funds, shall be used to fund battered spouse shelters and domestic violence programs established under Title 4, Subtitle 5 of this article; and

(4) the County Executive shall prepare and make available an annual report on or before December 1 of each year on the disposition of fees collected under this subsection during the previous fiscal year.

(m) *Additional license fee for battered spouse shelters and domestic violence programs - Montgomery County.*- In Montgomery County:

(1) the County Council may set by resolution an additional fee of up to $45 for each license;

(2) the clerk shall pay the proceeds from the additional fee to the Director of Finance of the county each month;

(3) the proceeds, in addition to designated federal, State, and county funds, shall be used to fund battered spouse shelters and domestic violence programs; and

(4) the County Executive shall prepare and make available an annual report on or before December 1 of each year on the disposition of fees collected under this subsection during the previous fiscal year.

(n) *Additional license fee for battered spouse shelters and domestic violence programs - Prince George's County.*- In Prince George's County:

(1) the County Council may set by resolution an additional fee of up to $60 for each license;

(2) the clerk shall pay the proceeds from the additional fee to the Director of Finance of the county, who shall distribute the proceeds to the Family Crisis Center of Prince George's County each month;

(3) if the Family Crisis Center of Prince George's County changes its name or objectives or ceases to exist, the proceeds, in addition to designated federal, State, and county funds, shall be used to fund battered spouse shelters and domestic violence programs; and

(4) the County Executive shall prepare and make available an annual report on or before December 1 of each year on the disposition of fees collected under this subsection during the previous fiscal year.

(o) *Additional license fee for battered spouse shelters and domestic violence programs - Washington County.*- In Washington County:

(1) the Board of County Commissioners may set an additional fee of up to $50 for each license;

(2) the clerk shall pay the proceeds from the additional fee to the County Commissioners each month; and

(3) the proceeds shall be used to fund battered spouse shelters and domestic violence programs in Washington County.

[An. Code 1957, art. 62, 14; 1984, ch. 296, 2; 1985, ch. 230; 1986, ch. 227; 1987, chs. 176, 254, 260; 1988, ch. 6, 1; 1992, ch. 355; 1993, ch. 109, 1; ch. 111; ch. 468, 1; ch. 511, 1; chs. 572, 585; 1994, ch. 32; 1995, ch. 454; 1996, ch. 10, 1; 1997, chs. 347, 374; 1999, ch. 336, 1, 2; 2000, ch. 172, 1, 2; 2005, ch. 25, 1; 2006, ch. 566; 2007, ch. 247; 2010, ch. 288.]

Effect of amendments. Chapter 288, Acts 2010, effective October 1, 2010, in (d)(1) substituted "shall" for "may," "resolution" for "ordinance," and "of up to $75" for "as authorized in this section."

2-404.1. Premarital preparation course.

(a) *Marriage license fee discount.*-

(1) A county may discount a marriage license fee under 2-404(a) of this subtitle if the couple to be married has completed, within 1 year before the date of the application for the license, a premarital preparation course that meets the requirements specified in this section.

(2) The amount of any discount shall be determined by the county governing body.

(b) *Course description.*- A premarital preparation course shall:

(1) include instruction regarding:

(i) conflict management;

(ii) communication skills;

(iii) financial responsibilities; and

(iv) children and parenting responsibilities; and

(2) consist of at least 4 hours of instruction.

(c) *Authorized instructors.*- A premarital preparation course may be conducted by:

(1) a clinical professional counselor or a clinical marriage and family therapist licensed under Title 17, Subtitle 3A of the Health Occupations Article;

(2) a psychologist licensed under Title 18 of the Health Occupations Article;

(3) a social worker licensed under Title 19 of the Health Occupations Article;

(4) an official representative of a religious institution if the representative has relevant training; or

(5) any other qualified provider approved by a county governing body.

(d) *Instructor registration affidavit.*-

(1) A premarital preparation course provider shall register with the clerk by filing a written affidavit containing:

(i) the provider's name, address, and telephone number;

(ii) a summary of the provider's qualifications and training; and

(iii) a statement that the provider shall comply with the course requirements specified in this section.

(2) The clerk may establish a roster of area premarital preparation course providers, including those who offer the course on a sliding fee scale or for free.

(e) *Certificate of completion.*-

(1) A premarital preparation course provider shall provide to each couple who completes the course a certificate of completion that specifies:

(i) the names of the couple;

(ii) the name of the provider; and

(iii) the date of completion of the course.

(2) To receive a discounted marriage license fee under this section, an applicant for a license shall verify completion of a premarital preparation course by filing with the clerk a valid certificate of course completion issued in accordance with paragraph (1) of this subsection.

(f) *Cost.*- Any cost for a premarital preparation course shall be paid by the applicant for a marriage license.

(g) *Domestic violence programs.*- The discount authorized by this section may not be applied to any fee used to fund domestic violence programs.

[2001, ch. 635.]

2-405. Issuance of license.

(a) *Clerk to issue license.-* The clerk for the county in which a marriage ceremony is to be performed may issue and deliver a license at the time the application is made.

(b) *When and where issued.-* A license may be issued only at the office of the clerk during regular office hours.

(c) *Receipt of consent, oath, and certificate; contents of record; sealing certificate.-*

(1) If either party to be married is known to be of an age where the parental or guardian's consent and oath, or the licensed physician's certificate, required by 2-301 of this title, is required, the clerk shall obtain the consent and oath or the certificate before issuing the license.

(2) (i) The clerk's record required under this title shall include:

1. the consent and oath required by 2-301 of this title, if written; or

2. the fact that consent was given and an oath was made, if given and made in person.

(ii) The licensed physician's certificate required by 2-301 of this title may not be made a part of the clerk's record.

(3) After an individual has been issued a license in accordance with the provisions of this subtitle, the clerk who issued the license shall seal the licensed physician's certificate. Except on order of the court, the licensed physician's certificate shall remain sealed.

(d) *Waiting period.-*

(1) Except as provided in paragraph (2) of this subsection, a license is not effective until 6 a.m. on the second calendar day after the license is issued.

(2) For good cause shown, a judge of the circuit court for the county in which the application is made may sign an authorization for a license to become effective at a time before the waiting period expires, as stated in the authorization, if 1 of the parties to be married is:

(i) a resident of this State; or

(ii) a member of the United States armed forces.

(e) *Clerk authorized to withhold license.-* If, during the questioning of an applicant for a license, the clerk finds that there is a legal reason why the applicants should not be married, the clerk shall withhold the license unless ordered by the court to issue the license.

(f) *To whom license may be mailed or delivered.-* A license may be delivered personally or by mail to:

(1) either of the parties to be married; or

(2) any person authorized in writing by either of the parties to accept delivery.

(g) *Birth control information and lists of family clinics.-*

(1) The Maryland Department of Health shall provide to each clerk:

(i) birth control information; and

(ii) a list of the family planning clinics located in the county where the license is issued.

(2) When the clerk issues a license, the clerk shall make the information and list available to each applicant for a license.

(h) *Prohibitions and penalties.-*

(1) A clerk may not predate an application for a license.

(2) A clerk who violates any provision of this subsection is guilty of a misdemeanor and on conviction is subject:

(i) for a first offense, to a fine not exceeding $100; and

(ii) for each subsequent offense, to a fine not exceeding $500 or imprisonment not exceeding 90 days or both.

[An. Code 1957, art. 62, 6, 7, 7A, 7B, 9, 10, 12; 1984, ch. 296, 2; 1985, ch. 478, 1; 1999, ch. 336, 2; 2017, ch. 214, 7.]

Editor's note. Section 3, ch. 336, Acts 1999, provides that "a license issued before October 1, 1999, remains as valid as if this Act had not been enacted."

Section 7, ch. 214, Acts 2017, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, shall correct, with no further action required by the General Assembly, cross-references and terminology rendered incorrect by this Act. The publisher shall adequately describe any correction made in an editor's note following the section affected." Pursuant to 7, ch. 214, Acts 2017, "Maryland Department of Health" was substituted for "Department of Health and Mental Hygiene" in the introductory language of (g)(1).

Licensing of same-sex marriage, effective date, and waiting period. - Where the law providing for same-sex marriage was approved by the voters with the Governor's proclamation on December 6, 2012, court clerks were authorized to issue licenses after the proclamation date but labeled as effective January 1, 2013, the effective date of the act. Licenses issued up to December 30, 2012, could be issued effective January 1, 2013, but licenses could not be issued prior to January 1, 2013, if the license did not specify an effective date; any licenses issued later than December 30, 2012, would be subject to the usual waiting period in 2-405 of the Family Law Article, after which time the license is valid for six months to authorize the ceremony. Under Maryland law, it is the ceremony, not the license, that validates the marriage. 97 Op. Att'y Gen. 72 (Aug. 23, 2012).

Quoted in Conaway v. Deane, 401 Md. 219, 932 A.2d 571 (2007).

2-406. Performance of ceremony.

(a) *Authorized officials.-*

(1) In this subsection, "judge" means:

(i) a judge of the District Court, a circuit court, the Court of Special Appeals, or the Court of Appeals;

(ii) a judge approved under Article IV, 3A of the Maryland Constitution and 1-302 of the Courts Article for recall and assignment to the District Court, a circuit court, the Court of Special Appeals, or the Court of Appeals;

(iii) a judge of a United States District Court, a United States Court of Appeals, or the United States Tax Court; or

(iv) a judge of a state court if the judge is active or retired but eligible for recall.

(2) A marriage ceremony may be performed in this State by:

(i) any official of a religious order or body authorized by the rules and customs of that order or body to perform a marriage ceremony;

(ii) any clerk;

(iii) any deputy clerk designated by the county administrative judge of the circuit court for the county; or

(iv) a judge.

(b) *Period during which ceremony may be performed.*- Within 6 months after a license becomes effective, any authorized official may perform the marriage ceremony of the individuals named in the license.

(c) *Performance by unauthorized individual prohibited; penalty.*-

(1) An individual may not perform a marriage ceremony unless the individual is authorized to perform a marriage ceremony under subsection (a) of this section.

(2) An individual who violates this subsection is guilty of a misdemeanor and on conviction is subject to a fine of $500.

(d) *Performance between individuals within prohibited degrees prohibited; penalty.*-

(1) An individual may not knowingly perform a marriage ceremony between individuals who are prohibited from marrying under 2-202 of this title.

(2) An individual who violates the provisions of this subsection is guilty of a misdemeanor and on conviction is subject to a fine of $500.

(e) *Performance without license prohibited; penalty.*-

(1) An individual may not perform a marriage ceremony without a license that is effective under this subtitle.

(2) An individual who violates the provisions of this subsection is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $500.

(f) *Ceremony performed by a clerk or deputy clerk.*- The county administrative judge of the circuit court for the county shall designate:

(1) when and where the clerk or deputy clerk may perform a marriage ceremony; and

(2) the form of the marriage ceremony to be recited by the clerk or deputy clerk and the parties being married.

(g) *Forms of religious ceremonies.*- This section does not affect the right of any religious denomination to perform a marriage ceremony in accordance with the rules and customs of the denomination.

[An. Code 1957, art. 27, 392, 394; art. 62, 3A, 4, 15; 1984, ch. 296, 2; 1999, ch. 336, 2; 2002, ch. 207; 2004, ch. 199; 2009, ch. 324.]

Editor's note. Section 3, ch. 336, Acts 1999, provides that "a license issued before October 1, 1999 remains as valid as if this Act had not been enacted."

University of Baltimore Law Review. For article, "State Constitutional Law for Maryland Lawyers: Individual Civil Rights," see 7 U. Balt. L. Rev. 299 (1978).

University of Baltimore Law Forum. For a 2013 development, "*Tshiani v. Tshiani*: Under the Doctrine of Comity, Maryland Recognizes a Validly Performed Foreign Marriage Conducted by Proxy or Telephone; Marriages by Proxy or Telephone Are Not Prohibited by Statute or Repugnant to Maryland Public Policy," see, 43 U. Balt. L. F. 189 (2013).

Residency not required of religious minister. - A minister of the Gospel or official of a religious order or body authorized by the rules and customs of said order or body to join persons in marriage may solemnize marriages in this State whether or not such person is a resident of Maryland. 58 Op. Att'y Gen. 414 (1973).

Licensing of same-sex marriage, effective date, and waiting period. - Where the law providing for same-sex marriage was approved by the voters with the Governor's proclamation on December 6, 2012, court clerks were authorized to issue licenses after the proclamation date but labeled as effective January 1, 2013, the effective date of the act. Licenses issued up to December 30, 2012, could be issued effective January 1, 2013, but licenses could not be issued prior to January 1, 2013, if the license did not specify an effective date; any licenses issued later than December 30, 2012, would be subject to the usual waiting period in 2-405 of the Family Law Article, after which time the license is valid for six months to authorize the ceremony. Under Maryland law, it is the ceremony, not the license, that validates the marriage. 97 Op. Att'y Gen. 72 (Aug. 23, 2012).

Telephone marriage. - Marriage performed over telephone is not valid in Maryland. Fleet v. Fleet, Daily Record, Oct. 23, 1946, (Cir. Ct. No. 2 of Baltimore City).

When a husband and wife were married in a ceremony in the Democratic Republic of Congo in which someone stood in for the husband and the husband participated by telephone, the marriage was not invalid in Maryland due to being contrary to an enactment of the General Assembly because neither this section, describing who could perform a marriage ceremony and when the ceremony had to be performed, nor any other statute precluded Maryland from recognizing a ceremony where one party participated by proxy, or in this manner, and the ceremony was valid in another jurisdiction, since, to preclude validity, a statute had to unequivocally void such marriages, and the General Assembly had not prohibited recognition of a foreign marriage such as this one. Tshiani v. Tshiani, 208 Md. App. 43, 56 A.3d 311 (2012).

Marriages performed by employees of clerk's office. - An employee of the clerk's office is not authorized to perform marriages unless, at the time of the marriage, that individual is a duly appointed and sworn deputy clerk who has been designated by the county administrative judge to perform marriages. Nevertheless, marriages performed by an employee of the clerk's office, who reasonably appears to be a deputy clerk with authority to perform marriages, are valid. 75 Op. Att'y Gen. 90 (September 25, 1990).

Common-law marriage - Since Maryland recognized that a common-law marriage valid where contracted was valid in Maryland, and since the evidence was sufficient that the second mesothelioma victim and his wife had been involved in a common-law marriage for the requisite period of time to have it

recognized as valid at the time the second mesothelioma victim filed his claim for damages, the trial court did not err in submitting the issue of whether he and his wife were considered to be married at the time he submitted his claim for damages; while Maryland had spelled out a ceremonial requirement and list of officials authorized to preside over a marriage in this section, it also recognized common-law marriages as well, which the jury could find from the evidence had existed. John Crane, Inc. v. Puller, 169 Md. App. 1, 899 A.2d 879, cert. denied, 906 A.2d 943 (2006).

Stated in Port v. Cowan, 426 Md. 435, 44 A.3d 970 (2012).

2-407. False statements.

(a) *Prohibited.*- An individual may not knowingly make any material false statement to obtain or to help another individual to obtain a license or marriage ceremony in violation of this title or of any order of court under 2-405 of this subtitle.

(b) *Violation constitutes perjury.*- An individual who violates the provisions of this section is guilty of perjury.

[An. Code 1957, art. 62, 11; 1984, ch. 296, 2.]

Provisions neither vague nor indefinite. - The provisions concerning false statements in the obtainment of a marriage license are neither vague nor indefinite and do not affront the constitutional guarantees of due process: They are explicit enough to enable a person of ordinary intelligence to ascertain with a fair degree of certainty what they prohibit and what conduct on the offender's part will render him liable to their penalties. Greenwald v. State, 221 Md. 235, 155 A.2d 894 (1959), cert. denied, 363 U.S. 719, 80 S. Ct. 1596, 4 L. Ed. 2d 1521 (1960).

Indictment using "knowingly" instead of "wilfully" not defective. - An indictment for false statements in the obtainment of a marriage license was not defective because it failed to allege wilfulness, since a statutory offense charged in the language of the statute is sufficient and the use of the statutory word "knowingly," instead of "wilfully," is sufficient to state the offense of false statements. Greenwald v. State, 221 Md. 235, 155 A.2d 894 (1959), cert. denied, 363 U.S. 719, 80 S. Ct. 1596, 4 L. Ed. 2d 1521 (1960).

Stated in Conaway v. Deane, 401 Md. 219, 932 A.2d 571 (2007).

2-408. Solicitation of individuals contemplating marriage; advertising in solicitation of marriages.

(a) *Prohibited acts.*- An authorized official may not give or offer to give any reward to any person as an inducement to direct to the authorized official any individual who is contemplating marriage.

(b) *Penalties.*- An authorized official who violates the provisions of subsection (a) of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $50 for each offense.

[An. Code 1957, art. 27, 396, 397; 1984, ch. 296, 2; 2003, ch. 70.]

2-409. Signing and disposition of marriage certificates.

(a) *Signing of certificate.*- Each marriage certificate shall contain:

(1) the name, signature, and title of the authorized official who performs the marriage ceremony; or

(2) if the individuals are married in a Society of Friends marriage ceremony, the signatures of the individuals and the attestation of the certificate by 2 overseers of the marriage ceremony.

(b) *Disposition of certificates.-*

(1) The authorized official who performs the marriage ceremony shall:

(i) hand 1 marriage certificate to the individuals; and

(ii) return, within 5 days from the date of the marriage ceremony, the other marriage certificate to the clerk who issued the license to which the certificates were attached, but if the authorized official who performs the marriage ceremony dies or resigns, some other individual shall return the certificate.

(2) If the individuals are married in a Society of Friends marriage ceremony, they:

(i) may keep 1 marriage certificate; and

(ii) within 5 days from the date of the marriage ceremony, shall return the other marriage certificate to the clerk who issued the license to which the certificates were attached.

(c) *Duty of clerk when certificate not returned.-* If the marriage certificate is not returned within 6 months after the date on which the license becomes effective, the clerk who issued the license shall attempt to determine whether the marriage ceremony was performed and, if so, the name of the authorized official who performed the marriage ceremony.

(d) *Disposition of certificates required; penalty.-*

(1) An individual who performs a marriage ceremony or who is married in a Society of Friends marriage ceremony may not violate the provisions of subsection (b)(1)(ii) or (2)(ii) of this section.

(2) An individual who violates any provision of this subsection is guilty of a misdemeanor and on conviction is subject to a fine in an amount that the court considers appropriate.

[An. Code 1957, art. 62, 4, 5, 15; 1984, ch. 296, 2; 1999, ch. 336, 2.]

Editor's note. Section 3, ch. 336, Acts 1999, provides that "a license issued before October 1, 1999 remains as valid as if this Act had not been enacted."

Constitutionality. - Provisions prohibiting advertising in solicitation of marriage are constitutional and do not deprive ministers of free exercise of religion. Hopkins v. State, 193 Md. 489, 69 A.2d 456 (1949), appeal dismissed, 339 U.S. 940, 70 S. Ct. 797, 94 L. Ed. 1357 (1950); Lambert v. State, 193 Md. 551, 69 A.2d 461 (1949). See State v. Clay, 182 Md. 639, 35 A.2d 821 (1944); Sturgill v. State, 191 Md. 75, 59 A.2d 763 (1948).

Evidence sufficient for conviction. - In view of the evidence that the defendant put out a sign advertising himself as a minister, the fact that he was not a pastor of a church and performed no ministerial duties other than marrying people was pertinent and admissible on a charge that the sign was erected with the intention of aiding in the solicitation of performance of marriages as prohibited by this statute. Sturgill v. State, 191 Md. 75, 59 A.2d 763 (1948).

Stated in Conaway v. Deane, 401 Md. 219, 932 A.2d 571 (2007).

2-410. Receipt and disposition of clerk's or deputy clerk's fee for performing marriage ceremony.

(a) *Fee and disposition of funds.-*

(1) Except as provided in this subsection, a judge, clerk, or deputy clerk may not receive any fee, remuneration, or gift for performing a marriage ceremony.

(2) (i) 1. A Maryland judge's fee for performing a marriage ceremony is a nonrefundable fee, payable to the clerk before a marriage license is issued, in the amount of $30 in Cecil County and $25 in any other county.

2. The clerk's or deputy clerk's fee for performing a marriage ceremony is $30 in Cecil County and $25 in any other county.

(ii) Except as provided in paragraph (10) of this subsection, each month the clerk shall pay $10 of each fee collected under this section into the general fund of the county.

(iii) Except as otherwise provided in this subsection, the clerk shall retain the remainder of each fee and deposit and disburse it in the same manner as other fees collected by the clerk.

(3) In Allegany County, from the remaining $15, the clerk shall pay, quarterly, $2 of each fee to the Allegany County Historical Society.

(4) (i) In Anne Arundel County, from the remaining $15, the clerk shall pay $4 of each fee to the Annarrundel County Trust for Preservation, Inc.

(ii) The Annarrundel County Trust for Preservation, Inc. shall report annually to the Anne Arundel County Executive and the Maryland Historical Trust on the use of all funds received under this section, including a detailed record of the expenditures and receipts of all funds transferred from the Anne Arundel County Committee of the Historical Trust.

(iii) The Anne Arundel County Executive or the Maryland Historical Trust may request at any time an audit of the financial records of the Annarrundel County Trust for Preservation, Inc.

(5) (i) In Baltimore County, the clerk shall pay the remaining $15 to the Baltimore County Historical Trust, Inc.

(ii) The Baltimore County Historical Trust, Inc. shall report annually to the Baltimore County Executive and the Maryland Historical Trust on the use of all funds received under this section, including a detailed record of the expenditures and receipts of all funds collected before July 1, 1987.

(iii) The Baltimore County Executive or the Maryland Historical Trust may request at any time an audit of the financial records of the Baltimore County Historical Trust, Inc.

(6) In Cecil County:

(i) of the funds remaining after the payment into the general fund of the county under paragraph (2)(ii) of this subsection, the clerk shall pay:

1. $5 of each fee to the Cecil Historical Trust, Incorporated; and

2. $5 of each fee to the Historical Society of Cecil County;

(ii) the Historical Society of Cecil County shall report annually to the Cecil County Commissioners on the use of the funds received under this section;

(iii) the Cecil Historical Trust, Incorporated shall report annually to the Cecil County Commissioners and the Maryland Historical Trust on the use of all funds received under this section, including a detailed record of the expenditures and receipts of all funds transferred from the Cecil County Committee of the Maryland Historical Trust; and

(iv) the Cecil County Commissioners or the Maryland Historical Trust may request at any time an audit of the financial records of the Cecil Historical Trust, Incorporated.

(7) In Garrett County, from the remaining $15, the clerk shall pay $5 of each fee to the Garrett County Historical Society.

(8) In Montgomery County, from the remaining $15, the clerk shall pay:

(i) $2 of each fee to the Montgomery County Historical Society, Incorporated; and

(ii) $3 of each fee into the fund for the enhancement and beautification of the Montgomery County Courthouse and facilities.

(9) (i) In Prince George's County, from the remaining $15, the clerk shall pay $3 of each fee to Prince George's Heritage, Inc.

(ii) Prince George's Heritage, Inc. shall report annually to the Prince George's County Executive and the Maryland Historical Trust on the use of all funds received under this section, including a detailed record of the expenditures and receipts of all funds collected before July 1, 1987.

(iii) The Prince George's County Executive or the Maryland Historical Trust may request at any time an audit of the financial records of Prince George's Heritage, Inc.

(10) In Harford County, from the $25 fee for performing a marriage ceremony, the clerk shall pay $20 of each fee to the Historical Society of Harford County, Inc.

(b) *Disposition of funds required; penalty.-*

(1) A clerk or deputy clerk may not violate any provision of this section.

(2) A clerk or deputy clerk who violates the provisions of this section is guilty of neglect of duty and on conviction is subject to removal from office.

[An. Code 1957, art. 62, 3A; 1984, ch. 296, 2; 1985, ch. 478, 1; 1986, chs. 80, 862; 1987, ch. 180; 1996, ch. 10, 1; 1997, ch. 347; 1998, ch. 275; 2004, ch. 25, 6; ch. 199; 2006, ch. 582; 2012, ch. 432.]

Effect of amendments. Chapter 432, Acts 2012, effective October 1, 2012, reenacted (a)(1) without change; in (a)(2)(ii) added the exception language; in (a)(10) substituted "$25 fee for performing a marriage ceremony" for "remaining $15" and "$20" for "$10"; and made related changes.

Stated in Conaway v. Deane, 401 Md. 219, 932 A.2d 571 (2007).

SUBTITLE 5. RECORDS

2-501. Marriage license book.

Each clerk shall keep in the clerk's office a marriage license book, which shall contain:

(1) a complete record of each license issued;

(2) a complete record of all matters the clerk is required to ascertain that relate to the rights of an individual to obtain a license;

(3) in regular order, the items testified to by the applicants for a license as required under this title;

(4) properly indexed, the name of each individual who intends to be married; and

(5) the date each certificate was filed and the name of the authorized official who performed the ceremony.

[An. Code 1957, art. 62, 8; 1984, ch. 296, 2.]

2-502. Foreign marriage record book; certificate of records.

(a) *"Foreign marriage" defined.*- In this section, "foreign marriage" means a marriage ceremony:

(1) performed outside this State; and

(2) in which 1 or both of the parties were or are citizens of this State.

(b) *Foreign marriage record book.*- Each clerk shall keep a foreign marriage record book in the clerk's office. The clerk shall record a foreign marriage when presented with either:

(1) a certificate of marriage signed by the individual who performed the marriage ceremony; or

(2) an official certified copy of a marriage record.

(c) *Certificate of foreign marriage.*- On request, the clerk shall provide, under the seal of the court, certification of a foreign marriage in the same manner as the clerk issues certification of a marriage ceremony performed in this State.

[An. Code 1957, art. 62, 19; 1984, ch. 296, 2.]

2-503. Reports to Secretary of Health; duplication of records.

(a) *Reports to Secretary of Health - Required.*- At the intervals that the Secretary of Health sets, each clerk shall send to the Secretary:

(1) a copy of the record of each marriage that the clerk licenses and records;

(2) a report of each divorce that the court grants;

(3) a report of each annulment of a marriage that the court:

(i) grants; or

(ii) effects by entering a conviction of bigamy or of marrying within any prohibited degree; and

(4) a report of any change in a marriage, divorce, or annulment record, in which the clerk shall certify that the change is correct and conforms to the corresponding record of the clerk.

(b) *Reports to Secretary of Health - Form.*- The report of a divorce or annulment or of a change in a marriage, divorce, or annulment record shall be made on the form that the Secretary of Health provides.

(c) *Duplication of marriage records by Secretary.*-

(1) The Secretary of Health may make photostatic, photographic, or microphotographic copies of the original marriage records of a clerk.

(2) The Secretary of Health may not remove any original marriage record from the custody of the clerk.

(3) The Secretary of Health shall:

(i) make the copies in a manner that does not interfere with the orderly transaction of business by the clerk; and

(ii) bear the cost of making the copies.

(d) *Extra compensation prohibited.*- The clerk may not receive any extra compensation for sending a report or record to the Secretary or for making records available to the Secretary.

(e) *Penalty.*- A clerk who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to a fine of $10 for each offense.

[An. Code 1957, art. 62, 18; 1984, ch. 296, 2; 2017, ch. 214, 7.]

Editor's note. Section 7, ch. 214, Acts 2017, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, shall correct, with no further action required by the General Assembly, cross-references and terminology rendered incorrect by this Act. The publisher shall adequately describe any correction made in an editor's note following the section affected." Pursuant to 7, ch. 214, Acts 2017, "Secretary of Health" was substituted for "Secretary of Health and Mental Hygiene" in the introductory language of (a), in (b), (c)(1), (c)(2), and the introductory language of (c)(3).

Cited in Garg v. Garg, 393 Md. 225, 900 A.2d 739 (2006).

the testimony, adjudicate the legal rights of the parties, and, where appropriate, enter a judgment of divorce. Leary v. Leary, 97 Md. App. 26, 627 A.2d 30 (1993).

Object. - Object of this provision is to prevent collusion. Heinmuller v. Heinmuller, 133 Md. 491, 105 A. 745 (1919); Timanus v. Timanus, 177 Md. 686, 10 A.2d 322 (1940); Schriver v. Schriver, 185 Md. 227, 44 A.2d 479 (1945); Kelsey v. Kelsey, 186 Md. 324, 46 A.2d 627 (1946); Maranto v. Maranto, 192 Md. 214, 64 A.2d 144 (1948); Misner v. Misner, 211 Md. 398, 127 A.2d 547 (1956); Binder v. Binder, 16 Md. App. 404, 297 A.2d 293 (1972).

Extent of corroboration. - Corroboration must extend to every element necessary to justify the relief sought. Hodges v. Hodges, 213 Md. 322, 131 A.2d 703 (1957); Smith v. Smith, 225 Md. 282, 170 A.2d 195 (1961); Smith v. Smith, 257 Md. 263, 262 A.2d 762 (1970); Deck v. Deck, 12 Md. App. 313, 278 A.2d 434 (1971).

In order for the testimony of the wife to be legally sufficient to establish constructive desertion as a ground for divorce, it must be adequately corroborated as to both the acts of misconduct and their adverse effect upon her health, safety, or self-respect. Colburn v. Colburn, 15 Md. App. 503, 292 A.2d 121 (1972).

Extent of corroboration - Variable. - Corroboration required varies with circumstances of particular cases, as the danger of collusion increases or diminishes. Jacobs v. Jacobs, 170 Md. 405, 185 A. 109 (1936); Kelsey v. Kelsey, 186 Md. 324, 46 A.2d 627 (1946); Maranto v. Maranto, 192 Md. 214, 64 A.2d 144 (1948).

Extent of corroboration - Where collusion unlikely. - When case precludes any possibility of collusion, only slight corroboration is required. Heinmuller v. Heinmuller, 133 Md. 491, 105 A. 745 (1919); Engelberth v. Engelberth, 159 Md. 700, 150 A. 271 (1930); Appel v. Appel, 162 Md. 5, 158 A. 65 (1932); Roeder v. Roeder, 170 Md. 579, 458 A. 458 (1936); Timanus v. Timanus, 177 Md. 686, 10 A.2d 322 (1940); Schriver v. Schriver, 185 Md. 227, 44 A.2d 479 (1945); Jones v. Jones, 186 Md. 312, 46 A.2d 617 (1946); Kelsey v. Kelsey, 186 Md. 324, 46 A.2d 627 (1946); Maranto v. Maranto, 192 Md. 214, 64 A.2d 144 (1948); Cullotta v. Cullotta, 193 Md. 374, 66 A.2d 919 (1949); Harp v. Harp, 198 Md. 485, 84 A.2d 895 (1951); Misner v. Misner, 211 Md. 398, 127 A.2d 547 (1956); Binder v. Binder, 16 Md. App. 404, 297 A.2d 293 (1972).

Corroboration - Contested divorce. - Corroborating evidence in contested divorce need only be slight. Carpenter v. Carpenter, 257 Md. 218, 262 A.2d 564 (1970); Colburn v. Colburn, 15 Md. App. 503, 292 A.2d 121 (1972).

In a contested divorce case where there is no basis for inferring collusion the corroboration need only be slight. Zulauf v. Zulauf, 218 Md. 99, 145 A.2d 414 (1958); Sewell v. Sewell, 218 Md. 63, 145 A.2d 422 (1958); Smith v. Smith, 225 Md. 282, 170 A.2d 195 (1961); Smith v. Smith, 257 Md. 263, 262 A.2d 762 (1970); Garner v. Garner, 257 Md. 723, 264 A.2d 858 (1970); Lewis v. Lewis, 13 Md. App. 550, 284 A.2d 21 (1971); Stenger v. Stenger, 14 Md. App. 232, 286 A.2d 552 (1972).

Corroboration - Strict application in uncontested cases. - The statutory rule requiring corroboration of plaintiff's testimony in a divorce case is applied most strictly in uncontested cases. Bowersox v. Bowersox, 157 Md. 476, 146 A. 266 (1929); Jones v. Jones, 186 Md. 312, 46 A.2d 617 (1946); Maranto v. Maranto, 192 Md. 214, 64 A.2d 144 (1948); Cullotta v. Cullotta, 193 Md. 374, 66 A.2d 919 (1949).

Corroboration - Abandonment cases. - Corroboration is necessary for divorce on the ground of abandonment. Owings v. Owings, 148 Md. 124, 128 A. 748 (1925); Jacobs v. Jacobs, 170 Md. 405, 185 A. 109 (1936); Wysocki v. Wysocki, 185 Md. 38, 42 A.2d 909 (1945).

When the claimed abandonment was the refusal to continue marital relations and the case is contested, the inherent difficulty of establishing the facts does not relieve the complainant from furnishing the corroboration required by the statute. Jones v. Jones, 186 Md. 312, 46 A.2d 617 (1946).

Complainant has the burden to prove the allegation that her husband refused to fulfill his marital duty, and a servant's testimony that the husband and wife occupied separate bedrooms does not substantiate the allegation. However, the testimony of the wife's physician as to statements made to him when she was

undergoing treatment are admissible in evidence and this testimony, when taken in connection with all the other facts and circumstances in the case, is sufficient corroboration of the testimony of the husband's abandonment. Kelsey v. Kelsey, 186 Md. 324, 46 A.2d 627 (1946).

A husband was not entitled to a divorce a vinculo matrimonii on the ground of abandonment based on the fact that his wife about two years prior to filing of bill had moved out of their bedroom and slept on the sofa in the living room where the only corroboration of husband's testimony was (1) that their son testified that the wife slept on the sofa, and (2) that the wife some six months after she had been sleeping on the sofa talked with husband's brother about consulting a lawyer for a divorce. Hodges v. Hodges, 213 Md. 322, 131 A.2d 703 (1957).

Corroboration - Desertion. - Before a wife's failure to follow her husband to a new domicile selected by him can serve as the basis for a finding that she has deserted him, a request that she join him must be made in good faith, and the request must be corroborated. Sewell v. Sewell, 218 Md. 63, 145 A.2d 422 (1958); Lewis v. Lewis, 13 Md. App. 550, 284 A.2d 21 (1971).

A husband was not entitled to a divorce on the ground of desertion, based in part on an alleged cessation of marital cohabitation for two and one-half years, where there was no sufficient corroboration of that fact, and no proof of an intention on the wife's part to desert. Testimony by a witness that the wife told her that the parties slept in different rooms, standing alone, was not sufficient corroboration. Zulauf v. Zulauf, 218 Md. 99, 145 A.2d 414 (1958).

Corroboration - Cruelty. - A divorce will not be granted on the ground of cruelty where plaintiff's evidence is not corroborated. Dicus v. Dicus, 131 Md. 87, 101 A. 697 (1917).

In a divorce action, in order to meet the burden of substantiating charges of cruelty of treatment, the evidence must be convincing, and sufficiently corroborated, that the defendant was guilty of legal cruelty. Hamren v. Hamren, 180 Md. 692, 26 A.2d 381 (1942).

Corroboration may be found in evidence of admissions by other spouse. - See Schriver v. Schriver, 185 Md. 227, 44 A.2d 479 (1945); Maranto v. Maranto, 192 Md. 214, 64 A.2d 144 (1948).

The corroboration required by this section may come from the other spouse. Deck v. Deck, 12 Md. App. 313, 278 A.2d 434 (1971); Colburn v. Colburn, 15 Md. App. 503, 292 A.2d 121 (1972); Binder v. Binder, 16 Md. App. 404, 297 A.2d 293 (1972).

Corroboration in divorce suits may be found in evidence of admissions by the other spouse, but such admissions, unsupported by other corroborative proof, should be received with utmost caution. Zulauf v. Zulauf, 218 Md. 99, 145 A.2d 414 (1958).

Husband's statements to third persons inadmissible. - In a suit for divorce, statements made by husband to third persons out of wife's presence were inadmissible to corroborate husband's statement on witness stand. Roberts v. Roberts, 160 Md. 513, 154 A. 95 (1931).

Testimony of daughter. - Daughters' testimony on father's admissions of adultery was sufficient to corroborate wife's testimony. Barr v. Barr, 58 Md. App. 569, 473 A.2d 1300 (1984).

Unnecessary for affirmative defense. - Corroboration of affirmative defense is not necessary. Binder v. Binder, 16 Md. App. 404, 297 A.2d 293 (1972).

7-102. Limited divorce.

(a) *Grounds for limited divorce.*- The court may decree a limited divorce on the following grounds:

(1) cruelty of treatment of the complaining party or of a minor child of the complaining party;

(2) excessively vicious conduct to the complaining party or to a minor child of the complaining party;

(3) desertion; or

(4) separation, if the parties are living separate and apart without cohabitation.

(b) *Time during which decree is effective.*- The court may decree a divorce under this section for a limited time or for an indefinite time.

(c) *Revocation of decree.*- The court that granted a decree of limited divorce may revoke the decree at any time on the joint application of the parties.

(d) *Decree of limited divorce on prayer for absolute divorce.*- If an absolute divorce is prayed and the evidence is sufficient to entitle the parties to a limited divorce, but not to an absolute divorce, the court may decree a limited divorce.

[An. Code 1957, art. 16, 25; 1984, ch. 296, 2; ch. 371; 2015, ch. 226.]

Effect of amendments. Chapter 226, Acts 2015, effective October 1, 2015, rewrote (a)(4); deleted (b); and redesignated accordingly.

I. General Consideration.

Maryland Law Review.

For note concerning mental cruelty as a ground for partial divorce, see 5 Md. L. Rev. 111 (1940).

For article on constructive desertion in Maryland, see 10 Md. L. Rev. 193 (1949).

For note, "Offers of Reconciliation in Maryland Divorce Law," see 30 Md. L. Rev. 49 (1970).

For article, "Maryland Custody Law - Fully Committed to the Child's Best Interest," see 41 Md. L. Rev. 225 (1982).

For note discussing fault considerations in the determination of alimony awards, see 41 Md. L. Rev. 539 (1982).

For a note, "Recent Decision: The Court of Appeals of Maryland: Family Law: Aleem v. Aleem: A Divorce From the Proper Comity Standard - Lowering the Bar That Courts Must Reach to Deny Recognizing Foreign Judgments," see, 68 Md. L. Rev. 662 (2009).

University of Baltimore Law Review. For discussion, "Property Disposition upon Divorce in Maryland: An Analysis of the New Statute," see 8 U. Balt. L. Rev. 377 (1979).

For article, "Merger of Law and Equity Under the Revised Maryland Rules: Does It Threaten Trial by Jury?" see 14 U. Balt. L. Rev. 1 (1984).

For note discussing the validity of antenuptial agreements waiving alimony, see 14 U. Balt. L. Rev. 200 (1984).

History of divorce and alimony in Maryland. - See Thomas v. Thomas, 294 Md. 605, 451 A.2d 1215 (1982).

Construction with custody statutes - When a husband and a wife lived under the same roof, but in separate bedrooms, the husband could bring a complaint for child custody and visitation. Section 5-203(d)(1) of this article, which stated that a court could award child custody if the parents lived apart, was ambiguous when read in conjunction with 1-201 and 7-102 of this article, and as a limited divorce could be decreed based on constructive desertion when the parties were living under the same roof, it would be illogical to deny the court the right to determine issues of custody, support, and visitation. Ricketts v. Ricketts, 393 Md. 479, 903 A.2d 857 (2006).

Divorce a vinculo and divorce a mensa distinguished. - See Schwab v. Schwab, 93 Md. 382, 49 A. 331 (1901); Stewart v. Stewart, 105 Md. 297, 66 A. 16 (1907).

Effect of limited divorce. - A limited divorce is one from bed and board. It grants unto the injured spouse the right to live separate and apart from the one at fault. However, the parties remain man and wife, and there is no severance of the marital bonds. Atkinson v. Atkinson, 13 Md. App. 65, 281 A.2d 407 (1971).

Divorce a mensa et thoro suspends right of cohabitation. Sullivan v. Commissioner of Internal Revenue, 256 F.2d 664 (4th Cir. 1958).

Mixed question of law and fact. - Abandonment and desertion and cruelty have been regarded in Maryland as mixed questions of law and fact to be decided at the final hearing; such grounds may be proved by a great variety of circumstances, and the pleader is not confined to the particular allegations of fact contained in the bill. Smith v. Smith, 216 Md. 141, 140 A.2d 58 (1958).

Weight of chancellor's findings on appeal. - Where testimony in a divorce case is so conflicting that it is impossible to determine from the record with any certainty who told the truth, the chancellor's findings should be given great weight and not be lightly disturbed on appeal. Levy v. Levy, 229 Md. 103, 181 A.2d 663 (1962).

Decree not suspended on appeal. - Appeal does not suspend decree of divorce. Sullivan v. Commissioner of Internal Revenue, 256 F.2d 664 (4th Cir. 1958).

Quoted in Att'y Griev. Comm'n v. Kreamer, 387 Md. 503, 876 A.2d 79 (2005).

Att'y Griev. Comm'n v. Kreamer, 387 Md. 503, 876 A.2d 79 (2005).

Cited in Walter v. Walter, 181 Md. App. 273, 956 A.2d 255 (2008).

II. Grounds.

A. In General.

Divorce a mensa granted only for causes set out in statutes. - A divorce a mensa will not be granted save for the causes set out in the statutes. Stewart v. Stewart, 105 Md. 297, 66 A. 16 (1907).

The jurisdiction to grant a divorce a mensa is purely statutory and the causes specified in this section are exclusive. Etheridge v. Etheridge, 120 Md. 11, 87 A. 497 (1913).

Court will not decree divorce a mensa for adultery. - The court will not decree a divorce a mensa where the only ground alleged is adultery. Stewart v. Stewart, 105 Md. 297, 66 A. 16 (1907).

Incompatibility, bad temper, etc. - Incompatibility, sharp tongues and bad temper are not grounds of divorce. Glass v. Glass, 175 Md. 693, 2 A.2d 443 (1938).

Excessive drinking. - Excessive drinking is not cause for divorce, unless accompanied by such conduct as to make it necessary for injured party to leave. Brault v. Brault, 189 Md. 175, 55 A.2d 497 (1947); Smith v. Smith, 225 Md. 282, 170 A.2d 195 (1961).

Drunkenness as an independent ground does not justify a divorce. Shutt v. Shutt, 71 Md. 193, 17 A. 1024 (1889); Wheeler v. Wheeler, 101 Md. 427, 61 A. 216 (1905).

Accusations of homosexuality. - The repeated accusations by the wife that her husband was a homosexual, a cold fish and lacking in manhood resulted in a loss of self-respect which made the continuance of the marital relation impossible. Liccini v. Liccini, 255 Md. 462, 258 A.2d 198 (1969).

Sufficiency of bill. - A bill for divorce need not set out the facts and circumstances that constitute the evidence of the causes of divorce alleged, and a bill is sufficient if it charges the statutory grounds in the language of the statute. Smith v. Smith, 216 Md. 141, 140 A.2d 58 (1958).

B. Cruelty of Treatment.

Interpretation of "cruelty". - "Cruelty of treatment" must be understood in a technical sense. Childs v. Childs, 49 Md. 509 (1878). See Hawkins v. Hawkins, 65 Md. 104, 3 A. 749 (1886); Wendel v. Wendel, 154 Md. 11, 139 A. 573 (1927).

Conduct must be such as will endanger life, person or health. - The court has defined legal cruelty by the husband to be such conduct on his part as will endanger the life, person or health of the wife or will cause reasonable apprehension of bodily suffering. McKane v. McKane, 152 Md. 515, 137 A. 288 (1927); Wendel v. Wendel, 154 Md. 11, 139 A. 573 (1927); Gellar v. Gellar, 159 Md. 236, 150 A. 717 (1930); Singewald v. Singewald, 165 Md. 136, 166 A. 441 (1933); Bonwit v. Bonwit, 169 Md. 189, 181 A. 237 (1935); Timanus v. Timanus, 177 Md. 686, 10 A.2d 322 (1940); Stirn v. Stirn, 183 Md. 59, 36 A.2d 695 (1944); Golas v. Golas, 247 Md. 621, 233 A.2d 804 (1967); Neff v. Neff, 13 Md. App. 128, 281 A.2d 556 (1971).

Cruelty includes any conduct on the part of the husband or wife which is calculated to seriously impair the health or permanently destroy the happiness of the other. Scheinin v. Scheinin, 200 Md. 282, 89 A.2d 609 (1952).

Violence. - Violent, outrageous conduct, rendering impossible the proper discharge of the duties of married life, amounts to cruelty of treatment and furnishes ground for a divorce a mensa to a husband who deserts the home. Stecher v. Stecher, 226 Md. 155, 172 A.2d 515 (1961).

Single act of violence not ordinarily cruelty. - Ordinarily, a single act of violence does not constitute cruelty of treatment within the meaning of the law as a cause for a divorce a mensa. Harrison v. Harrison, 223 Md. 422, 164 A.2d 901 (1960); Murphy v. Murphy, 248 Md. 455, 237 A.2d 523 (1968); Ballan v. Ballan, 251 Md. 737, 248 A.2d 871 (1969); Liccini v. Liccini, 255 Md. 462, 258 A.2d 198 (1969).

Unless serious harm intended or future danger. - In order to constitute cruelty of treatment, a single act of violence must indicate an intention to do serious bodily harm, or be of such a nature as to threaten serious danger in the future. Harrison v. Harrison, 223 Md. 422, 164 A.2d 901 (1960); Murphy v. Murphy, 248 Md. 455, 237 A.2d 523 (1968); Coover v. Coover, 258 Md. 643, 267 A.2d 119 (1970); Neff v. Neff, 13 Md. App. 128, 281 A.2d 556 (1971).

Series of acts deemed sufficient ground. - A series of acts of personal violence, or a menace to the safety of life, limb, or health, or any determined threat of serious bodily hurt is sufficient ground for divorce. Hastings v. Hastings, 147 Md. 177, 127 A. 743 (1925); Stirn v. Stirn, 183 Md. 59, 36 A.2d 695 (1944).

Where a husband compels his wife to submit to sexual intercourse at times when it causes her serious injury, and there is reasonable apprehension that he will continue to do so, the wife is entitled to a divorce a mensa et thoro on the ground of cruelty. Griest v. Griest, 154 Md. 696, 140 A. 590 (1928); Hockman v. Hockman, 184 Md. 473, 41 A.2d 510 (1945).

Public statements not required. - Statements amounting to mental cruelty do not necessarily have to be made in public. Li v. Li, 249 Md. 593, 241 A.2d 389 (1968).

False charges of infidelity. - Unfounded charges of infidelity, especially when coupled with spying, public abuse and physical violence, entitle a wife to divorce, either on the ground of cruelty or of constructive desertion. Sullivan v. Sullivan, 223 Md. 74, 162 A.2d 453 (1960).

Unfounded public charges of infidelity constitute cruelty. Li v. Li, 249 Md. 593, 241 A.2d 389 (1968); Ballan v. Ballan, 251 Md. 737, 248 A.2d 871 (1969).

Conduct not constituting cruelty. - Mere austerity of temper, petulance of manner, rudeness of language, even occasional sallies of passion, if they do not threaten bodily harm, do not constitute such cruelty of treatment as will be ground for divorce. Hastings v. Hastings, 147 Md. 177, 127 A. 743 (1925); McKane v. McKane, 152 Md. 515, 137 A. 288 (1927); Wald v. Wald, 161 Md. 493, 159 A. 97 (1931); Hyatt v. Hyatt, 173 Md. 693, 196 A. 317 (1938); Stirn v. Stirn, 183 Md. 59, 36 A.2d 695 (1944); Hockman v. Hockman, 184 Md. 473, 41 A.2d 510 (1945); Peed v. Peed, 232 Md. 220, 192 A.2d 494 (1963); Neff v. Neff, 13 Md. App. 128, 281 A.2d 556 (1971); Ches v. Ches, 22 Md. App. 475, 323 A.2d 651 (1974).

Marital neglect, indifference, a failure to provide as freely as the wife may desire in dress or in conveniences, sallies of passion, harshness, rudeness, and the use of profane and abusive language towards her are not sufficient, if not in manner or degree endangering her personal security or health. Short v. Short, 151 Md. 444, 135 A. 176 (1926); Glass v. Glass, 175 Md. 693, 2 A.2d 443 (1938); Ballan v. Ballan, 251 Md. 737, 248 A.2d 871 (1969).

Condonation. - Condonation after acts of cruelty depends upon circumstances and the situation of the parties, and whether there has been forgiveness and reconciliation. Sullivan v. Sullivan, 223 Md. 74, 162 A.2d 453 (1960); Neff v. Neff, 13 Md. App. 128, 281 A.2d 556 (1971).

Revival of misconduct. - Misconduct, although conditionally condoned, may be revived by subsequent misconduct. Sullivan v. Sullivan, 223 Md. 74, 162 A.2d 453 (1960).

C. Excessively Vicious Conduct.

"Excessively vicious conduct" defined. - See Shutt v. Shutt, 71 Md. 193, 17 A. 1024 (1889); Wheeler v. Wheeler, 101 Md. 427, 61 A. 216 (1905).

Cursing. - Cursing and use of vile epithets does not constitute excessively vicious conduct or cruelty. McKane v. McKane, 152 Md. 515, 137 A. 288 (1927).

D. Desertion.

Duration. - Divorce a mensa may be granted for abandonment, without regard to its duration. Harding v. Harding, 22 Md. 337 (1864); Klein v. Klein, 146 Md. 27, 125 A. 728 (1924); Styka v. Styka, 257 Md. 464, 263 A.2d 555 (1970).

A divorce a mensa may be decreed on the ground of abandonment and desertion, provided that the abandonment and desertion be the deliberate act of the party complained of, done with the intent that the marriage relation shall no longer exist. Miller v. Miller, 153 Md. 213, 138 A. 22 (1927); Kruse v. Kruse, 183 Md. 369, 37 A.2d 898 (1944).

Duration considered in determining whether alleged abandonment real. - While it is true that a divorce for abandonment and desertion may be granted without regard to the duration of the abandonment, nevertheless, the conclusion is inevitable that the length of time in which the separation has existed is an element of consideration in determining whether an alleged abandonment is real or merely exists in the imagination or desire of the complainant. Boyd v. Boyd, 177 Md. 687, 11 A.2d 461 (1940).

"Abandonment and desertion" must be understood in a technical sense. Childs v. Childs, 49 Md. 509 (1878).

What constitutes abandonment and desertion. - Abandonment and desertion as a marital offense consist of the voluntary separation of one of the married parties from the other, or the refusal to renew suspended cohabitation, without justification either in the consent or the wrongful conduct of the other party. Boyd v. Boyd, 177 Md. 687, 11 A.2d 461 (1940); Miller v. Miller, 185 Md. 79, 42 A.2d 915 (1945); Mower v. Mower, 209 Md. 413, 121 A.2d 185 (1956); Thurlow v. Thurlow, 212 Md. 222, 129 A.2d 170 (1957).

For desertion to constitute a ground for divorce, there must be a separation of one spouse from the other without justification, either in the wrongful conduct or the consent of the other. Ballan v. Ballan, 251 Md. 737, 248 A.2d 871 (1969); Ches v. Ches, 22 Md. App. 475, 323 A.2d 651 (1974).

Elements. - Elements necessary to constitute abandonment are cohabitation ended and intention to desert. Miller v. Miller, 153 Md. 213, 138 A. 22 (1927); Kruse v. Kruse, 183 Md. 369, 37 A.2d 898 (1944); Miller v. Miller, 185 Md. 79, 42 A.2d 915 (1945); Jester v. Jester, 246 Md. 162, 228 A.2d 829 (1967); Fuller v. Fuller, 249 Md. 28, 237 A.2d 925 (1968); Ballan v. Ballan, 251 Md. 737, 248 A.2d 871 (1969); Styka v. Styka, 257 Md. 464, 263 A.2d 555 (1970); Binder v. Binder, 16 Md. App. 404, 297 A.2d 293 (1972).

Elements need not identically commence. - Abandonment and desertion as grounds for a divorce a mensa et thoro contain two elements: First, cohabitation ended and, second, intention to desert; these two elements need not necessarily be identical in their commencement. Thurlow v. Thurlow, 212 Md. 222, 129 A.2d 170 (1957). See Klein v. Klein, 146 Md. 27, 125 A. 728 (1924); Muller v. Muller, 125 Md. 72, 93 A. 404 (1925); Boyd v. Boyd, 177 Md. 687, 11 A.2d 461 (1940); Dunnigan v. Dunnigan, 182 Md. 47, 31 A.2d 634 (1943); Hoffman v. Hoffman, 241 Md. 118, 215 A.2d 808 (1966).

Intent. - Abandonment must be deliberate act of party complained of, done with the intent that the marriage status shall no longer exist. Boyd v. Boyd, 177 Md. 687, 11 A.2d 461 (1940).

Refusal to cohabit may amount to desertion. - The refusal of one spouse without just cause to cohabit with the other is an act amounting to desertion on the part of the one so refusing. Timanus v. Timanus, 177 Md. 686, 10 A.2d 322 (1940).

Action could be maintained when parties lived under same roof - Complaint for a limited divorce alleging constructive desertion based on lack of marital relations may be maintained when both parties continue to live under the same roof, albeit not in the same bedroom and without cohabitation. Thus, when a husband alleged that his wife had constructively deserted him by denying him marital relations and forcing him from the marital bedroom, it was error to dismiss his complaint for a limited divorce. Ricketts v. Ricketts, 393 Md. 479, 903 A.2d 857 (2006).

Refusal to have sexual intercourse constitutes desertion. - Permanent refusal of either the husband or the wife to have sexual intercourse with the other spouse, from no consideration of health or other good

reason, constitutes matrimonial desertion although the parties continue to live in the same house. Mower v. Mower, 209 Md. 413, 121 A.2d 185 (1956); Fortman v. Fortman, 250 Md. 355, 243 A.2d 517 (1968); Ballan v. Ballan, 251 Md. 737, 248 A.2d 871 (1969).

Occupying separate bedroom. - The mere fact that a husband ceases to occupy the room in which he and his wife have been accustomed to sleep and thereafter occupies, alone, another room in the house is not necessarily a withdrawal of marital right from the wife which constitutes desertion within the meaning of the statute. It is only where it is without good reason that the husband leaves his wife and permanently refuses to have intercourse with her that the occupancy of another room constitutes desertion as a ground for divorce. Mower v. Mower, 209 Md. 413, 121 A.2d 185 (1956); Parsons v. Parsons, 255 Md. 602, 258 A.2d 437 (1969); Whitehurst v. Whitehurst, 257 Md. 685, 264 A.2d 822 (1970).

Abandonment need not be without reasonable hope or expectation of reconciliation. - In a suit for divorce a mensa et thoro on the grounds of abandonment and desertion, contrary to a suit for a divorce a vinculo matrimonii on the same grounds, it is not necessary to prove, or for the chancellor to find, that the abandonment and desertion were without reasonable hope or expectation of reconciliation. Thurlow v. Thurlow, 212 Md. 222, 129 A.2d 170 (1957).

Abandonment by common consent excluded. - Law excludes possibility of abandonment arising in common consent, because a joint wrong could give no cause of complaint to either. Of course, the mere fact that a man, whose wife is dissatisfied and stubborn, finally accepts the inevitable and permits her to leave, after reasonable efforts to persuade her not to go, does not show that the separation was by mutual consent so as to bar his right to a divorce. Miller v. Miller, 185 Md. 79, 42 A.2d 915 (1945).

Where husband and wife were living under the same roof without marital cohabitation, and no gesture of conciliation or forgiveness was made by either, the only possible inference is that they both preferred to live in sullen hostility, and neither party in such a case is entitled to a divorce. Mower v. Mower, 209 Md. 413, 121 A.2d 185 (1956).

A separation by consent does not constitute an abandonment of one spouse by the other. Buchholtz v. Buchholtz, 232 Md. 374, 194 A.2d 115 (1963).

A divorce was improperly granted on ground of desertion where parties had entered into a preliminary agreement to separate. Wilner v. Wilner, 251 Md. 13, 246 A.2d 273 (1968).

No distinction made as to which partner abandons. - No distinction is made between whether the abandoning or deserting party is the male or female partner to the marriage. Coleman v. State, 37 Md. App. 322, 377 A.2d 553 (1977).

Constructive desertion because of offensive conduct. - Where a husband's misbehavior has been such as to render continuance of the marriage relation unbearable, or such as is recognized by the law as sufficient to justify his wife in leaving him, he is the spouse who is guilty of desertion. Pattison v. Pattison, 132 Md. 362, 103 A. 977 (1918); Antrim v. Antrim, 169 Md. 418, 181 A. 741 (1935); Serio v. Serio, 170 Md. 542, 185 A. 548 (1936); Hockman v. Hockman, 184 Md. 473, 41 A.2d 510 (1945); Scheinin v. Scheinin, 200 Md. 282, 89 A.2d 609 (1951); Pohzehl v. Pohzehl, 205 Md. 395, 109 A.2d 58 (1954); Bryant v. Bryant, 16 Md. App. 186, 294 A.2d 467 (1972).

Conduct of one spouse which compels the other to leave may justify a divorce to the other on the ground of desertion, even though the conduct may not justify a divorce on the ground of cruelty; it must, however, be such as to render impossible a continuation of matrimonial cohabitation with safety, health, and self-respect. Neff v. Neff, 13 Md. App. 128, 281 A.2d 556 (1971).

One spouse may leave the other, if the party who leaves cannot continue to live under conditions which render the continuation of the marriage whereby it will be almost impossible, in fact impossible, for the marriage to continue with self-respect. Liccini v. Liccini, 255 Md. 462, 258 A.2d 198 (1969).

Offensive conduct may not constitute legal cruelty. - The law is now established in this State that any conduct of a husband which renders the marital relation intolerable and compels the wife to leave him may justify a divorce on the ground of constructive desertion, even though the conduct may not justify a

divorce on the ground of cruelty. Miller v. Miller, 185 Md. 79, 42 A.2d 915 (1945); Zimmerman v. Zimmerman, 199 Md. 176, 85 A.2d 802 (1952); Bryce v. Bryce, 229 Md. 16, 181 A.2d 455 (1962); Murphy v. Murphy, 248 Md. 455, 237 A.2d 523 (1968); Li v. Li, 249 Md. 593, 241 A.2d 389 (1968); Ballan v. Ballan, 251 Md. 737, 248 A.2d 871 (1969); Liccini v. Liccini, 255 Md. 462, 258 A.2d 198 (1969); Colburn v. Colburn, 15 Md. App. 503, 292 A.2d 121 (1972); Ches v. Ches, 22 Md. App. 475, 323 A.2d 651 (1974).

Any conduct of a husband that renders the marital relation intolerable and compels the wife to leave him may justify a divorce on the ground of constructive desertion, even though the conduct may not justify a divorce on the ground of cruelty. Bryant v. Bryant, 16 Md. App. 186, 294 A.2d 467 (1972).

Conduct justifying desertion. - To justify desertion spouse must have grounds that would support a suit for divorce, or at least show conduct on the part of the other spouse that would render a continuance of the marital relationship unbearable. Sackman v. Sackman, 236 Md. 237, 203 A.2d 903 (1964).

Where a wife has established, by undisputed, corroborated evidence that her husband abandoned her, if the husband defends either on the grounds that the wife was guilty of adultery or on the grounds that she was guilty of excessively vicious conduct or such cruelty as to justify his leaving her, he must show such facts as would entitle him to a decree had he filed the bill. Binder v. Binder, 16 Md. App. 404, 297 A.2d 293 (1972).

Misconduct of the husband will justify a wife in leaving him if it is such as will make it impossible for her to continue cohabitation without loss of her safety, health or self-respect, or is such as will cause reasonable apprehension of bodily suffering. Miller v. Miller, 185 Md. 79, 42 A.2d 915 (1945); Pohzehl v. Pohzehl, 205 Md. 395, 109 A.2d 58 (1954); Murphy v. Murphy, 248 Md. 455, 237 A.2d 523 (1968); Ballan v. Ballan, 251 Md. 737, 248 A.2d 871 (1969); Deckman v. Deckman, 15 Md. App. 553, 292 A.2d 112 (1972); Bryant v. Bryant, 16 Md. App. 186, 294 A.2d 467 (1972); Ches v. Ches, 22 Md. App. 475, 323 A.2d 651 (1974).

Even though the cruelty required in a constructive desertion case may be less than a case wherein an a mensa decree is sought on the grounds of cruelty, yet the objectionable conduct still must be such as to render continuation of the marital relationship impossible, if the complaining spouse is to preserve his or her health, safety or self-respect. Obviously, for such a situation to exist, there must be a pattern of persistent conduct which is detrimental to the safety or health of the complaining spouse, or so demeaning to his or her self-respect as to be intolerable. Liccini v. Liccini, 255 Md. 462, 258 A.2d 198 (1969).

Where the husband's mother living in the same apartment was dominating, faultfinding and interfering to an extent which affected the wife's health, and the husband refused to take any steps to correct the situation, the chancellor's finding that he was guilty of constructive desertion was held to be supported by the evidence. Grubb v. Grubb, 200 Md. 452, 90 A.2d 175 (1952).

Where the wife left the husband and refused to cohabit with him because of his unfounded charges of infidelity, his drunkenness, spying, public abuse and physical violence, the chancellor's finding that the wife's desertion was justified was supported by the evidence. Sullivan v. Sullivan, 223 Md. 74, 162 A.2d 453 (1960).

Single act of violence not justification. - A single act of violence does not measure up to what the law of this State requires as constituting a justification for the wife's living away from her husband. Harrison v. Harrison, 223 Md. 422, 164 A.2d 901 (1960).

Alcoholism. - Alcoholism or excessive use of alcohol does not justify termination of marriage, unless it is accompanied by such conduct as to make it necessary for the injured party to leave. Binder v. Binder, 16 Md. App. 404, 297 A.2d 293 (1972).

Drunkenness or alcoholism of one spouse is not, in itself, sufficient to establish constructive desertion. Liccini v. Liccini, 255 Md. 462, 258 A.2d 198 (1969).

Cessation of sexual relations not per se constructive desertion. - The fact of cessation of sexual relations between husband and wife, does not, per se, establish constructive desertion. Whitehurst v. Whitehurst, 257 Md. 685, 264 A.2d 822 (1970).

Nor voluntary separation. - Where there was no evidence whatever to establish that prior to the separation, the husband had been guilty of misconduct which caused the wife to flee the marital abode to protect her own safety or that of her children, but, on the contrary, the wife's own testimony showed that the separation was voluntary in that immediately prior thereto she and the husband had mutually agreed to separate, the chancellor was not clearly in error in finding that the evidence failed to establish constructive desertion. Deckman v. Deckman, 15 Md. App. 553, 292 A.2d 112 (1972).

Marital indifference and desire to end marriage not justification for desertion. - One spouse's mere marital indifference or lack of demonstrated love, or rudeness or expressed desire to end the marriage relation will not legally justify the other spouse's departure from the marital household, however intolerable such conduct might appear to be to the demeaned spouse. Bryant v. Bryant, 16 Md. App. 186, 294 A.2d 467 (1972).

Abusive language or occasional acts of violence not justification for desertion. - Marital indifference and neglect, use of vulgar and abusive language, and even occasional acts of violence, if not in such a manner and degree as to endanger the wife's personal security or health, are not sufficient to justify abandonment. Miller v. Miller, 185 Md. 79, 42 A.2d 915 (1945).

Scolding or nagging wife insufficient ground. - Husband may not with impunity desert scolding wife. Cohn v. Cohn, 209 Md. 470, 121 A.2d 704 (1956), overruled on other grounds, Frey v. Frey, 298 Md. 552, 471 A.2d 705 (1984).

Nagging, etc., was not sufficient to justify abandonment of wife by husband, and where abandonment was deliberate, wife was entitled to divorce a mensa et thoro with alimony. Bradshaw v. Bradshaw, 189 Md. 322, 55 A.2d 719 (1947).

E. Voluntary Separation.

Law does not countenance separation for trivial reasons. - The law of Maryland does not countenance the separation of husband and wife for slight or trivial reasons, but only upon the clearest and most satisfactory proof of facts showing that it is impossible for the parties to discharge the duties of married life. Miller v. Miller, 185 Md. 79, 42 A.2d 915 (1945).

Marriage is not to be terminated for light causes or merely because of a desire to escape from an unpleasant and unhappy environment. Stecher v. Stecher, 226 Md. 155, 172 A.2d 515 (1961).

Meritorious cause required. - Causes of separation must be grave and weighty and such as to show that the duties of married life cannot be properly discharged, to entitle one to divorce a mensa et thoro. Foeller v. Foeller, 171 Md. 660, 190 A. 221 (1937).

To justify a husband and wife in living apart, the reasons must be grave and weighty. Buckner v. Buckner, 118 Md. 101, 84 A. 156 (1912); Harrison v. Harrison, 223 Md. 422, 164 A.2d 901 (1960); Murphy v. Murphy, 248 Md. 455, 237 A.2d 523 (1968); Ches v. Ches, 22 Md. App. 475, 323 A.2d 651 (1974).

Effect of refusal of offer of reconciliation on separation by mutual consent. - If a married couple separate by mutual consent, and one of them afterwards seeks reconciliation in good faith, but the other refuses to return, then the refusal constitutes desertion from the time of the refusal. Miller v. Miller, 185 Md. 79, 42 A.2d 915 (1945).

III. Attempts at Reconciliation.

Reconciliation alone not terminating decree. - Reconciliation does not of itself terminate decree of divorce a mensa et thoro. Thomas v. Thomas, 48 Md. App. 255, 426 A.2d 976 (1981), aff'd, 294 Md. 605, 451 A.2d 1215 (1982).

IV. Revocation of Decree.

Decree may be revoked upon joint application of parties. - In all cases where a limited divorce is decreed, it may be revoked at any time thereafter by the court upon the joint application of the parties to be discharged from the operation of the decree. Bradshaw v. Bradshaw, 189 Md. 322, 55 A.2d 719 (1947).

V. Decree on Prayer for Absolute Divorce.

No amendment of bill necessary. - The court may decree a divorce a mensa et thoro where a divorce a vinculo matrimonii is prayed in the bill if the proof establishes a right to a divorce a mensa, and no amendment of the bill is necessary. Smith v. Smith, 216 Md. 141, 140 A.2d 58 (1958).

Evidence must not sustain absolute divorce. - To warrant the chancellor in decreeing a divorce a mensa et thoro, where a divorce a vinculo matrimonii is prayed, he must find that the evidence offered would not sustain a decree for a divorce a vinculo matrimonii. Kruse v. Kruse, 183 Md. 369, 37 A.2d 898 (1944).

7-103. Absolute divorce.

(a) *Grounds for absolute divorce.*- The court may decree an absolute divorce on the following grounds:

(1) adultery;

(2) desertion, if:

(i) the desertion has continued for 12 months without interruption before the filing of the application for divorce;

(ii) the desertion is deliberate and final; and

(iii) there is no reasonable expectation of reconciliation;

(3) conviction of a felony or misdemeanor in any state or in any court of the United States if before the filing of the application for divorce the defendant has:

(i) been sentenced to serve at least 3 years or an indeterminate sentence in a penal institution; and

(ii) served 12 months of the sentence;

(4) 12-month separation, when the parties have lived separate and apart without cohabitation for 12 months without interruption before the filing of the application for divorce;

(5) insanity if:

(i) the insane spouse has been confined in a mental institution, hospital, or other similar institution for at least 3 years before the filing of the application for divorce;

(ii) the court determines from the testimony of at least 2 physicians who are competent in psychiatry that the insanity is incurable and there is no hope of recovery; and

(iii) 1 of the parties has been a resident of this State for at least 2 years before the filing of the application for divorce;

(6) cruelty of treatment toward the complaining party or a minor child of the complaining party, if there is no reasonable expectation of reconciliation;

(7) excessively vicious conduct toward the complaining party or a minor child of the complaining party, if there is no reasonable expectation of reconciliation; or

(8) mutual consent, if:

(i) the parties do not have any minor children in common;

(ii) the parties execute and submit to the court a written settlement agreement signed by both parties that resolves all issues relating to:

1. alimony; and

2. the distribution of property, including the relief provided in 8-205 and 8-208 of this article;

(iii) neither party files a pleading to set aside the settlement agreement prior to the divorce hearing required under the Maryland Rules; and

(iv) both parties appear before the court at the absolute divorce hearing.

(b) *Recrimination.*- Recrimination is not a bar to either party obtaining an absolute divorce on the grounds set forth in subsection (a)(1) through (7) of this section, but is a factor to be considered by the court in a case involving the ground of adultery.

(c) *Res judicata.*- Res judicata with respect to another ground under this section is not a bar to either party obtaining an absolute divorce on the ground of 12-month separation.

(d) *Condonation.*- Condonation is not an absolute bar to a decree of an absolute divorce on the ground of adultery, but is a factor to be considered by the court in determining whether the divorce should be decreed.

(e) *Effect of limited divorce on application for absolute divorce.*-

(1) A court may decree an absolute divorce even if a party has obtained a limited divorce.

(2) If a party obtained a limited divorce on the ground of desertion that at the time of the decree did not meet the requirements of subsection (a)(2) of this section, the party may obtain an absolute divorce on the ground of desertion when the desertion meets the requirements of subsection (a)(2) of this section.

(f) *Effect of mutual consent decrees on settlement agreements.*- If a court decrees an absolute divorce on the grounds of mutual consent under subsection (a)(8) of this section, the court may:

(1) merge or incorporate the settlement agreement into the divorce decree; and

(2) modify or enforce the settlement agreement consistent with Title 8, Subtitle 1 of this article.

[An. Code 1957, art. 16, 24, 26, 31; 1984, ch. 296, 2; ch. 371; 1998, chs. 349, 350; 2003, ch. 419; 2011, ch. 65, 5; chs. 423, 424; 2015, chs. 226, 353.]

I. General Consideration.

Effect of amendments. Chapters 423 and 424, Acts 2011, effective October 1, 2011, made identical changes. Each deleted former (a)(3) and redesignated accordingly; and in (a)(4) and (c) substituted "12-month" for "2-year" and variants.

Chapter 226, Acts 2015, effective October 1, 2015, reenacted the section without change.

Chapter 353, Acts 2015, effective October 1, 2015, added (a)(8) and (f) and made related changes.

Editor's note. Pursuant to 5, ch. 65, Acts 2011, "(7)" was substituted for "(8)" in (b).

Maryland Law Review. For notes concerning voluntary separation as ground for divorce, see 2 Md. L. Rev. 357 (1938), 7 Md. L. Rev. 146 (1943), and 15 Md. L. Rev. 261 (1955).

For article on constructive desertion in Maryland, see 10 Md. L. Rev. 193 (1949).

For note concerning recrimination as bar to divorce on ground of voluntary separation, see 17 Md. L. Rev. 268 (1957).

For note on alimony where wife elects to obtain divorce rather than annulment, see 23 Md. L. Rev. 283 (1963).

For note, "Offers of Reconciliation in Maryland Divorce Law," see 30 Md. L. Rev. 49 (1970).

For comment on divisible divorce in Maryland, see 30 Md. L. Rev. 63 (1970).

For comment, "Best Interests of the Child: Maryland Child Custody Disputes," see 37 Md. L. Rev. 641 (1978).

For note discussing fault considerations in the determination of alimony awards, see 41 Md. L. Rev. 539 (1982).

For a note, "Recent Decision: The Court of Appeals of Maryland: Family Law: Aleem v. Aleem: A Divorce From the Proper Comity Standard - Lowering the Bar That Courts Must Reach to Deny Recognizing Foreign Judgments," see, 68 Md. L. Rev. 662 (2009).

University of Baltimore Law Review. For note discussing a parent's adultery as raising no presumption of unfitness for child custody, see 7 U. Balt. L. Rev. 141 (1977).

For discussion, "Property Disposition upon Divorce in Maryland: An Analysis of the New Statute," see 8 U. Balt. L. Rev. 377 (1979).

For article, "Merger of Law and Equity Under the Revised Maryland Rules: Does It Threaten Trial by Jury?" see 14 U. Balt. L. Rev. 1 (1984).

For note discussing the validity of antenuptial agreements waiving alimony, see 14 U. Balt. L. Rev. 200 (1984).

History of divorce and alimony in Maryland. - See Thomas v. Thomas, 294 Md. 605, 451 A.2d 1215 (1982).

Divorce a vinculo and divorce a mensa distinguished. - See Stewart v. Stewart, 105 Md. 297, 66 A. 16 (1907).

Entry of divorce nunc pro tunc. - A Chancellor's entry of divorce nunc pro tunc was deemed inappropriate. Doser v. Doser, 106 Md. App. 329, 664 A.2d 453 (1995).

Weight of chancellor's findings on appeal. - Where testimony in a divorce case is so conflicting that it is impossible to determine from the record with any certainty who told the truth, the chancellor's findings should be given great weight and not be lightly disturbed on appeal. Levy v. Levy, 229 Md. 103, 181 A.2d 663 (1962).

Applied in Miller v. Miller, 70 Md. App. 1, 519 A.2d 1298 (1987); Scott v. Scott, 103 Md. App. 492, 653 A.2d 1017 (1995).

Quoted in Att'y Griev. Comm'n v. Kreamer, 387 Md. 503, 876 A.2d 79 (2005); Att'y Griev. Comm'n v. O'Leary, 433 Md. 2, 69 A.3d 1121 (2013).

Stated in Lemley v. Lemley, 102 Md. App. 266, 649 A.2d 1119 (1994).

Cited in Brashier v. Brashier, 80 Md. App. 93, 560 A.2d 44, cert. denied, 317 Md. 542, 565 A.2d 670 (1989); Tracey v. Tracey, 328 Md. 380, 614 A.2d 590 (1992); Leary v. Leary, 97 Md. App. 26, 627 A.2d 30 (1993); Wright v. Phipps, 122 Md. App. 480, 712 A.2d 606 (1998), cert. dismissed, 351 Md. 661, 719 A.2d 1261 (1998); Digges v. Digges, 126 Md. App. 361, 730 A.2d 202 (1999), cert. denied, 356 Md. 17, 736 A.2d 1065 (1999); Katsenelenbogen v. Katsenelenbogen, 135 Md. App. 317, 762 A.2d 198 (2000); Morris v. Goodwin, 230 Md. App. 395, 148 A.3d 63 (2016).

II. Grounds.

A. In General.

No jurisdiction in cases not specifically enumerated. - The courts do not have jurisdiction of divorce cases other than those specifically enumerated. Wright v. Wright's Lessee, 2 Md. 429 (1852).

Neither a divorce a vinculo nor a divorce a mensa will be granted save for the causes set out in the respective provisions dealing with the same. Stewart v. Stewart, 105 Md. 297, 66 A. 16 (1907).

Trial court erred in granting the parties an absolute divorce on the ground that the marriage was void ab initio because that ground was no longer available under this section. Ledvinka v. Ledvinka, 154 Md. App. 420, 840 A.2d 173 (2003).

Requirement of decree stating ground for divorce. - When only one ground is alleged in a complaint, and a divorce is granted, it is unnecessary for the decree to state the ground; however, when more than one ground is alleged, it is desirable that the decree specify the ground upon which the divorce is granted. Borne v. Borne, 33 Md. App. 578, 365 A.2d 359 (1976).

Equal guilt precludes divorce. - Where husband and wife are guilty of marital offenses of equal magnitude, this precludes either spouse from obtaining a divorce from the other. Matakieff v. Matakieff, 246 Md. 23, 226 A.2d 887 (1967); Blumenthal v. Blumenthal, 258 Md. 534, 266 A.2d 337 (1970).

No-fault as new social policy. - Adoption of nonculpatory grounds for divorce has introduced new social policy into the laws of this State. Flanagan v. Flanagan, 270 Md. 335, 311 A.2d 407 (1973), superseded by statute on other grounds, Freedenburg v. Freedenburg, 123 Md. App. 729, 720 A.2d 948 (1998).

Prenuptial unchastity is not ground. - Prenuptial unchastity is no longer ground for divorce. Behr v. Behr, 181 Md. 422, 30 A.2d 750 (1943).

Mere failure to support is not grounds for divorce a vinculo. - The mere failure of a husband to support his wife and children does not authorize a divorce a vinculo. Wheeler v. Wheeler, 101 Md. 427, 61 A. 216 (1905).

Act occurring after prior suit instituted may serve as basis for subsequent suit. - An act occurring after a prior suit was instituted but before a decree dismissing that bill was filed could serve as the basis for a decree in a subsequent suit. Besche v. Besche, 209 Md. 442, 121 A.2d 708 (1956).

Act following filing. - Act occurring after filing of bill for divorce, even though it would entitle complainant to the relief prayed, cannot serve as the basis for a decree in that case. Evidence of such occurrences may be introduced only as it reflects upon intent or probabilities or revival of condoned offenses. Besche v. Besche, 209 Md. 442, 121 A.2d 708 (1956); Lyons v. Lyons, 48 Md. App. 312, 426 A.2d 446 (1981).

Ground for divorce prerequisite to grant of alimony. - There can be no grant of permanent alimony unless claimant can show grounds sufficient to support decree of divorce, either a vinculo or a mensa. Roth v. Roth, 49 Md. App. 433, 433 A.2d 1162, cert. denied, 291 Md. 781 (1981).

Alimony following no-fault divorce. - Decree based on nonculpatory ground does not exonerate husband from payment of alimony. Flood v. Flood, 16 Md. App. 280, 295 A.2d 784 (1972), modified, 24 Md. App. 395, 330 A.2d 715 (1975).

B. Adultery.

Time and place of adultery need not be alleged with exactness. - A bill is sufficient if it alleges that defendant on divers days and times committed adultery with a person named in a certain county; it is not necessary to disclose with exactness the time and place. Darner v. Darner, 157 Md. 97, 145 A. 179 (1929).

Proof beyond reasonable doubt not required. - It is not essential that adultery be proved beyond reasonable doubt. Abare v. Abare, 221 Md. 445, 157 A.2d 427 (1960); McKim v. McKim, 225 Md. 311, 170 A.2d 208 (1961).

Burden of proof; evidence required. - The burden of proof is upon the complainant, and the evidence must establish affirmatively that actual adultery was committed, since nothing less than the carnal act itself can lay the foundation of a divorce for adultery. Direct proof, that is, the evidence of eyewitnesses, is not required, for such is the nature of the offense and the secret and clandestine manner in which it is committed that proof of this kind is not most cases unattainable; yet where it is sought to be inferred from circumstances, the latter must lead to the conclusion of guilt by fair inference, as a necessary conclusion. Pohzehl v. Pohzehl, 205 Md. 395, 109 A.2d 58 (1954); Abare v. Abare, 221 Md. 445, 157 A.2d 427 (1960); Smith v. Smith, 225 Md. 282, 170 A.2d 195 (1961); McKim v. McKim, 225 Md. 311, 170 A.2d 208 (1961); Laccetti v. Laccetti, 245 Md. 97, 225 A.2d 266 (1967); Matakieff v. Matakieff, 246 Md. 23, 226 A.2d 887 (1967).

The circumstances must be such as to lead a reasonable and just man to the conclusion of misconduct, although adverse inferences may be drawn from evidence of disposition and opportunity. Smith v. Smith, 225 Md. 282, 170 A.2d 195 (1961).

An actual act of adultery need not be witnessed. Breault v. Breault, 250 Md. 173, 242 A.2d 116 (1968).

It is not necessary to prove the actual commission of the adulterous acts to establish guilt: It is sufficient where the facts and circumstances proved are such as would lead the guarded discretion of a reasonable and just man to the conclusion of guilt. Meeks v. Meeks, 189 Md. 80, 54 A.2d 334 (1947).

Adultery may be shown by circumstantial evidence. Breault v. Breault, 250 Md. 173, 242 A.2d 116 (1968).

Where divorce is sought on the ground of adultery the adultery may be shown by circumstantial evidence and an actual act of adultery need not be witnessed. Goldschmiedt v. Goldschmiedt, 258 Md. 22, 265 A.2d 264 (1970).

Disposition and opportunity must be shown. - To sustain a charge of adultery by circumstantial evidence, and disposition on the part of the defendant and the paramour to commit adultery and an opportunity to commit the offense must be shown. Pohzehl v. Pohzehl, 205 Md. 395, 109 A.2d 58 (1954); Abare v. Abare, 221 Md. 445, 157 A.2d 427 (1960); Blankenship v. Blankenship, 239 Md. 498, 212 A.2d 294 (1965); Laccetti v. Laccetti, 245 Md. 97, 225 A.2d 266 (1967); Matakieff v. Matakieff, 246 Md. 23, 226 A.2d 887 (1967); Breault v. Breault, 250 Md. 173, 242 A.2d 116 (1968); Pontorno v. Pontorno, 257 Md. 576, 263 A.2d 820 (1970); Goldschmiedt v. Goldschmiedt, 258 Md. 22, 265 A.2d 264 (1970); Deckman v. Deckman, 15 Md. App. 553, 292 A.2d 112 (1972); Borne v. Borne, 33 Md. App. 578, 365 A.2d 359 (1976).

Adultery cannot be predicated on the assumed natural inclination of persons living in the same abode, without any evidence whatsoever of any manifestation of such an inclination. Laccetti v. Laccetti, 245 Md. 97, 225 A.2d 266 (1967).

Disposition and opportunity must be shown, more than opportunity alone. - More than mere opportunity must be shown to sustain a charge of adultery. Abare v. Abare, 221 Md. 445, 157 A.2d 427 (1960); Deckman v. Deckman, 15 Md. App. 553, 292 A.2d 112 (1972).

The showing of a mere opportunity, although a prerequisite to circumstantial proof of adultery, has little or no evidentiary significance in itself. Borne v. Borne, 33 Md. App. 578, 365 A.2d 359 (1976).

Adulterous disposition. - Evidence of adulterous disposition should be established by conduct of the guilty party and the paramour which consists of some public display of intimacy or indifference to propriety that is observed by others. Pontorno v. Pontorno, 257 Md. 576, 263 A.2d 820 (1970); Deckman v. Deckman, 15 Md. App. 553, 292 A.2d 112 (1972).

Something more than suspicion must be shown. - Something more than mere suspicion or indiscretion is necessary to overcome the presumption of innocence. Laccetti v. Laccetti, 245 Md. 97, 225 A.2d 266 (1967).

Public display not required. - Public display of intimacy observed by others is not essential as a matter of proof where adultery is charged. Abare v. Abare, 221 Md. 445, 157 A.2d 427 (1960); Deckman v. Deckman, 15 Md. App. 553, 292 A.2d 112 (1972).

Attention from other than spouse. - Adultery is not proved by mere fact that woman accepts marked attention from a man other than her husband in spite of the latter's objection. Pohzehl v. Pohzehl, 205 Md. 395, 109 A.2d 58 (1954).

Same-sex sexual infidelity is adultery. - Maryland courts would recognize same-sex sexual infidelity as adultery, constituting grounds for divorce without the requirement of living separate and apart for a year. 100 Op. Att'y Gen. 105 (July 24, 2015).

Evidence sufficient. - Evidence was sufficient to support court's grant of absolute divorce to wife on the ground of husband's adultery where the husband denied adultery in answer and admitted several adulterous affairs during trial, which demonstrated issue of adultery was contested and there was no collusion between spouses. Alston v. Alston, 85 Md. App. 176, 582 A.2d 574 (1990), modified on other grounds, 331 Md. 496, 629 A.2d 70 (1993).

Effect of condonation. - Although the trial court properly found that appellee wife condoned the adultery of the husband, the court erred in concluding that the condonation necessarily barred a divorce on that ground, as condonation is not an absolute bar to divorce on the ground of adultery. Aronson v. Aronson, 115 Md. App. 78, 691 A.2d 785 (1997), cert. denied and appeal dismissed, 346 Md. 371, 697 A.2d 111 (1997).

Effect of adultery on alimony. - While adultery of a wife, prior to an absolute divorce, constitutes a ground for revoking a prior award to her of permanent alimony, it does not necessarily extend to acts of misconduct committed by a wife after marriage has been totally dissolved. Atkinson v. Atkinson, 13 Md. App. 65, 281 A.2d 407 (1971).

Where a wife's adultery did not in fact foreclose her right to obtain a divorce a vinculo, it did not foreclose her right to obtain alimony. Wallace v. Wallace, 46 Md. App. 213, 416 A.2d 1317 (1980), aff'd, 290 Md. 265, 429 A.2d 232 (1981).

C. Desertion.

"Abandonment" defined. - Abandonment means the unjustified separation of one spouse from the other with the deliberate intention of the offender to terminate the marriage relation. Bennett v. Bennett, 197 Md. 408, 79 A.2d 513 (1951); Moran v. Moran, 219 Md. 399, 149 A.2d 399 (1959).

Abandonment represents cessation of marital relation. - Abandonment means something more than merely ceasing to live together; it means a cessation of the marital relation. A desertion may exist although the husband and wife live under the same roof. Kelsey v. Kelsey, 186 Md. 324, 46 A.2d 627 (1946).

Elements. - A court may decree a divorce a vinculo matrimonii when the court is satisfied that the party complained against has abandoned the party complaining, and such abandonment has continued uninterruptedly for at least twelve months and is deliberate and final, and the separation of the parties is beyond any reasonable expectation of reconciliation. Hite v. Hite, 210 Md. 576, 124 A.2d 581 (1956); Deck v. Deck, 12 Md. App. 313, 278 A.2d 434 (1971).

In order to secure a divorce on the ground of abandonment the plaintiff must prove that the defendant deliberately left him with the intent to bring the marriage relations to an end, that the separation has continued uninterruptedly for twelve months, and that there is no reasonable hope of a reconciliation. Tomkey v. Tomkey, 130 Md. 292, 100 A. 283 (1917); Thurlow v. Thurlow, 212 Md. 222, 129 A.2d 170 (1957).

For a leaving of one spouse by the other to constitute "abandonment," there must be two affirmative elements: First, the ending of the cohabitation, and, second, the offending party's intention to desert. Dunnigan v. Dunnigan, 182 Md. 47, 31 A.2d 634 (1943); Zulauf v. Zulauf, 218 Md. 99, 145 A.2d 414 (1958).

Abandonment must be the deliberate act of the defendant done with the intent to terminate the marriage relations. Levering v. Levering, 16 Md. 213 (1860); Lynch v. Lynch, 33 Md. 328 (1870); Goodhues v. Goodhues, 90 Md. 292, 44 A. 990 (1899); Gill v. Gill, 93 Md. 652, 49 A. 557 (1901); Wheeler v. Wheeler, 101 Md. 427, 61 A. 216 (1905); Twigg v. Twigg, 107 Md. 676, 69 A. 517 (1908).

Intent. - Intention to desert must be definite that the marital status shall no longer exist. Zulauf v. Zulauf, 218 Md. 99, 145 A.2d 414 (1958).

The moving party in a divorce action charging desertion must prove, inter alia, that the offending party had the intention to desert, i.e., the intention that the marriage relation shall no longer exist. Applegarth v. Applegarth, 239 Md. 92, 210 A.2d 362 (1965).

Separation and intent to desert must coexist during statutory period. - In order to constitute desertion as a ground for an absolute divorce, separation and an intent to desert must coexist during the statutory period. Timanus v. Timanus, 177 Md. 686, 10 A.2d 322 (1940).

Separation and intent to desert need not begin together. - While the separation and the intention to abandon must concur, the two elements need not begin together, and desertion begins whenever to either one the other is added. Dunnigan v. Dunnigan, 182 Md. 47, 31 A.2d 634 (1943).

Length of separation. - Length of time during which separation has existed is to be considered in determining whether an alleged abandonment is real, or exists merely in the imagination or desire of the complaining party. Boyd v. Boyd, 177 Md. 687, 11 A.2d 461 (1940); Dunnigan v. Dunnigan, 182 Md. 47, 31 A.2d 634 (1943).

No decree without required period of separation. - A court has no authority to enter a decree of divorce a vinculo matrimonii based on a bill of complaint alleging abandonment where it is clear from the testimony that the 12-month period of separation has not been complied with. Lyons v. Lyons, 48 Md. App. 312, 426 A.2d 446 (1981).

Refusal to have sexual intercourse as abandonment. - The permanent and irrevocable refusal, without proper cause, of the wife to have sexual intercourse constitutes abandonment. Fleegle v. Fleegle, 136 Md. 630, 110 A. 889 (1920); Hodges v. Hodges, 213 Md. 322, 131 A.2d 703 (1957).

Refusal of husband to continue marital relations for more than eighteen months (now twelve months), being deliberate without reasonable expectation of reconciliation, entitled the wife to absolute divorce. Kelsey v. Kelsey, 186 Md. 324, 46 A.2d 627 (1946); Kerber v. Kerber, 240 Md. 312, 214 A.2d 164 (1965).

Unless refusal resultant of spouse's cruelty. - If a woman refuses unjustifiably to permit her husband to have sexual intercourse with her throughout a period of three years (now twelve months), her refusal entitles her husband to an absolute divorce; if, however, the cessation of intercourse is the result of the husband's cruelty, he cannot maintain a suit for divorce. Timanus v. Timanus, 177 Md. 686, 10 A.2d 322 (1940).

Separate bedrooms. - Where husband without just cause or reason ceased to occupy bedroom with wife and moved into separate room and wife had made several attempts to become reconciled without success, such abandonment by husband continuing more than eighteen months (now twelve months) without reasonable hope and expectation of reconciliation, wife was entitled to a divorce a vinculo matrimonii. Burke v. Burke, 204 Md. 637, 106 A.2d 59 (1954).

The mere fact that a husband ceases to occupy the room in which he and his wife have been accustomed to sleep and thereafter occupies, alone, another room in the house is not necessarily a withdrawal of marital right from the wife which constitutes desertion within the meaning of the statute: It is only where it is without good reason that the husband leaves his wife and permanently refuses to have

intercourse with her that the occupancy of another room constitutes desertion as a ground for divorce. Hodges v. Hodges, 213 Md. 322, 131 A.2d 703 (1957).

Action of one spouse in compelling other to leave may be abandonment. - The action of the husband in compelling his wife to leave him may amount to an abandonment by the husband. Levering v. Levering, 16 Md. 213 (1860); Harding v. Harding, 22 Md. 337 (1864); Wheeler v. Wheeler, 101 Md. 427, 61 A. 216 (1905).

Abandonment charged against person causing. - Abandonment may be construed to be chargeable against party whose fault caused it, even though the other party physically left the common abode. Deck v. Deck, 12 Md. App. 313, 278 A.2d 434 (1971).

If the conduct of the husband has been such as to render continuance of the marriage relations unbearable, justifying the wife in remaining away from the home, he is the one who is guilty of desertion. Stewart v. Stewart, 256 Md. 272, 260 A.2d 71 (1969).

Nature of objectionable conduct. - In order to grant a divorce on the grounds of constructive desertion the objectionable conduct must be such as to render continuation of the marital relationship impossible, if the complaining spouse is to preserve his or her health, safety or self-respect. Obviously, for such a situation to exist, there must be a pattern of persistent conduct which is detrimental to the safety or health of the complaining spouse, or so demeaning to his or her self-respect as to be intolerable. Carpenter v. Carpenter, 257 Md. 218, 262 A.2d 564 (1970).

Attentions to another woman, short of proof of adultery, may justify a wife in leaving or not returning to her husband. Moran v. Moran, 219 Md. 399, 149 A.2d 399 (1959).

In arriving at a determination whether the husband was legally justified in leaving the wife, the test is whether her conduct was such as to put him in fear of his life or to render it impossible for him to continue the marital cohabitation with health, safety and self-respect. Luther v. Luther, 233 Md. 92, 195 A.2d 605 (1963).

Practice of abnormal sexual relations and demands for their continuance has been held adequate grounds for constructive desertion. Stewart v. Stewart, 256 Md. 272, 260 A.2d 71 (1969).

A wife may refuse to cohabit with her husband after she has discovered evidence which gives rise to a suspicion of her husband's unfaithfulness and after he has made an assault upon her. Timanus v. Timanus, 177 Md. 686, 10 A.2d 322 (1940).

Nagging, abuse, cursing and swearing do not amount to cruelty of treatment or excessively vicious conduct which will justify one spouse in deserting the other. Stewart v. Stewart, 256 Md. 272, 260 A.2d 71 (1969).

Conduct not justifying desertion. - A single act of cruelty is not sufficient for constructive desertion. Stewart v. Stewart, 256 Md. 272, 260 A.2d 71 (1969).

"Nagging" and "jealousy" do not justify one spouse in leaving the other. Moran v. Moran, 219 Md. 399, 149 A.2d 399 (1959).

Leaving husband under belief that cause for divorce existed against him. - The fact that a wife has left her husband under the belief, manifested by her bringing suit for divorce a few days later, which proved, however, to be mistaken, that she had a valid cause for divorce against him, has been held not to show desertion on her part. Sewell v. Sewell, 218 Md. 63, 145 A.2d 422 (1958).

Desertion condoned by sexual relations. - Where the wife not only admitted but insisted that she continued to copulate with the husband on many occasions following the date of his alleged desertion, she thereby condoned and terminated any desertion by the husband which existed prior to the last act of sexual relations between them, since such relations are legally compatible only with marriage, not with separation. Sullivan v. Sullivan, 234 Md. 67, 197 A.2d 910 (1964); Moore v. Moore, 36 Md. App. 696, 375 A.2d 37 (1977).

Condoned and unrevived desertion cannot be grounds. - An act of desertion which has been condoned and has not been revived cannot be a ground for an absolute divorce. Moore v. Moore, 36 Md. App. 696, 375 A.2d 37 (1977).

Duty to make offer of reconciliation. - Where husband's original separation and the continuance of it appear to be without sufficient cause in law, this places the husband, and not the wife, in the position of the erring spouse and the one upon whom rests the obligation of making an offer of reconciliation. Such an offer must be in good faith, free from improper qualifications and conditions and really intended to be carried out in accordance with the letter and the spirit of the matrimonial vows and obligations. Diamond v. Diamond, 182 Md. 103, 32 A.2d 376 (1943).

No distinction made as to which partner abandons. - No distinction is made between whether the abandoning or deserting party is the male or female partner to the marriage. Coleman v. State, 37 Md. App. 322, 377 A.2d 553 (1977).

Sufficiency of bill alleging desertion. - In a suit for an absolute divorce, a bill alleging the desertion substantially in the terms of the statute is sufficient. Besche v. Besche, 209 Md. 442, 121 A.2d 708 (1956).

Effect of separation agreement. - Abandonment is interrupted by agreement of separation, but intent as to future separation is rebuttable by parol evidence. Melson v. Melson, 151 Md. 196, 134 A. 136 (1926).

A separation agreement (i.e., not an agreement to separate, as such, but an agreement as to support or property rights during an existing or contemplated separation) may be an acquiescence in abandonment and therefore a bar to a divorce on that ground, but is not per se a bar to a subsequent suit for divorce. Stevens v. Stevens, 233 Md. 279, 196 A.2d 447 (1964).

D. Voluntary Separation.

Nature of provision authorizing divorce on ground of voluntary separation. - Divorce by reason of voluntary separation manifests an intention to permit the marriage relationship to be terminated without regard to fault. Matysek v. Matysek, 212 Md. 44, 128 A.2d 627 (1957).

Three grounds. - There are three requirements for divorce a vinculo on ground of voluntary separation: there must be an express or an implied mutual agreement between the parties to separate, accompanied by a mutual intent not to resume the marriage relationship; the parties must voluntarily have lived separate and apart without cohabitation for at least 18 consecutive months (now 12 months); there must be proof that the separation is beyond any reasonable hope of reconciliation. Garner v. Garner, 257 Md. 723, 264 A.2d 858 (1970); Carney v. Carney, 16 Md. App. 243, 295 A.2d 792 (1972); Wallace v. Wallace, 290 Md. 265, 429 A.2d 232 (1981).

Where a separation agreement recited that the parties had voluntarily agreed to separate, and the uncontradicted evidence showed that they actually lived separate and apart without cohabitation for more than the specified statutory period of eighteen months (now twelve months) and without either party having made an effort to bring about a reconciliation; this, since it clearly manifested an intention to permit the marriage relationship to be terminated in law, as well as in fact, without regard to fault, was all that was required under this section. Miller v. Miller, 237 Md. 237, 205 A.2d 794 (1965).

Corroboration. - Every element must be corroborated. Garner v. Garner, 257 Md. 723, 264 A.2d 858 (1970).

Voluntary separation agreement. - Voluntary separation agreement, executed under oath, has been sanctioned by legislature as full corroboration of complainant's testimony as to the mutual and voluntary nature of the separation. Lukat v. Lukat, 21 Md. App. 354, 319 A.2d 818 (1974).

When separation occurs. - Separation does not occur until parties cease living in same house even though they cease sexual relations prior to that time. Carney v. Carney, 16 Md. App. 243, 295 A.2d 792 (1972).

Where the parties to a divorce suit intermittently lived in the same house during the eighteen months prior to the institution of suit, they were not living "separate and apart, without cohabitation," since even if it be assumed that there was sufficient evidence to establish that they had not engaged in sexual relations during the periods in which they occupied the same abode, that factor would not be controlling. Lillis v. Lillis, 235 Md. 490, 201 A.2d 794 (1964).

Meritorious cause required. - Separation, to be justified, must be for grave and weighty causes. Besche v. Besche, 209 Md. 442, 121 A.2d 708 (1956).

Separation must be mutually voluntary. - Separation, to entitle either party to absolute divorce after three years' (now twelve months') voluntary separation, must be mutually voluntary. Beck v. Beck, 180 Md. 321, 24 A.2d 295 (1942); Carney v. Carney, 16 Md. App. 243, 295 A.2d 792 (1972).

Unless the parties agree to live apart the separation cannot be voluntary. France v. Safe Deposit & Trust Co., 176 Md. 306, 4 A.2d 717 (1939); Kline v. Kline, 179 Md. 10, 16 A.2d 924 (1940); Nichols v. Nichols, 181 Md. 392, 30 A.2d 446 (1943); Hahn v. Hahn, 192 Md. 561, 64 A.2d 739 (1949).

In order for the separation of husband and wife to be regarded as voluntary, there must be an agreement of the parties to live separate and apart with a common intent not to resume marital relations. Foote v. Foote, 190 Md. 171, 57 A.2d 804 (1948); Sullivan v. Sullivan, 234 Md. 67, 197 A.2d 910 (1964); Smith v. Smith, 257 Md. 263, 262 A.2d 762 (1970).

A voluntary separation must be accompanied by a mutual intent to terminate the marriage; mutuality of intent is a component of voluntariness. Aronson v. Aronson, 115 Md. App. 78, 691 A.2d 785 (1997), cert. denied and appeal dismissed, 346 Md. 371, 697 A.2d 111 (1997).

"Voluntary" defined. - The word "voluntary," when used in reference to a common act of two or more persons affecting their common relationship, means that they acted in willing concert in the doing of the act. France v. Safe Deposit & Trust Co., 176 Md. 306, 4 A.2d 717 (1939); Kline v. Kline, 179 Md. 10, 16 A.2d 924 (1940); Foote v. Foote, 190 Md. 171, 57 A.2d 804 (1948); Hite v. Hite, 210 Md. 576, 124 A.2d 581 (1956).

Husband's voluntariness not shown. - Appellee's claim was inadequate to dissolve her marriage on the ground of a one year voluntary separation; there was insufficient evidence as to the intent of appellant husband concerning termination of the marriage, and appellee did not otherwise corroborate her claim as to this important element. Aronson v. Aronson, 115 Md. App. 78, 691 A.2d 785 (1997), cert. denied and appeal dismissed, 346 Md. 371, 697 A.2d 111 (1997).

The trial court did not err in refusing to find a separation voluntary where the husband's testimony revealed that it was the wife who left the marriage, and nothing in the transcript of the wife's testimony indicated otherwise. Caccamise v. Caccamise, 130 Md. App. 505, 747 A.2d 221 (2000), cert. denied, 359 Md. 29, 753 A.2d 2 (2000).

Acquiescence in separation. - Wife's acquiescence in original separation and failure to seek reconciliation made it voluntary for the statutory period. Miller v. Miller, 237 Md. 237, 205 A.2d 794 (1965).

Later realization. - Realization by both spouses that their separation is final does not, ipso facto, establish agreement that they will live separate and apart. Sullivan v. Sullivan, 234 Md. 67, 197 A.2d 910 (1964).

Assent to inevitable no voluntarty agreement. - An acquiescence to or assent to what one cannot prevent does not amount to a voluntary agreement thereto. Stumpf v. Stumpf, 228 Md. 350, 179 A.2d 893 (1962); Sullivan v. Sullivan, 234 Md. 67, 197 A.2d 910 (1964); Wallace v. Wallace, 290 Md. 265, 429 A.2d 232 (1981).

Mere acquiescence in a separation that the wife could not prevent or resignation to its continuance after it began, does not make the separation voluntary on her part. Moran v. Moran, 219 Md. 399, 149 A.2d 399 (1959).

Acquiescence is not tantamount to consent or an agreement on the part of the party acquiescing. Carney v. Carney, 16 Md. App. 243, 295 A.2d 792 (1972).

Timing of agreement. - Separation may be involuntary when it first occurs and later become voluntary, or it may begin at any time after the physical separation, if the parties manifest agreement in a common intent not to live together again. Misner v. Misner, 211 Md. 398, 127 A.2d 547 (1956).

A separation may be involuntary when it first occurs and later become voluntary. Hahn v. Hahn, 192 Md. 561, 64 A.2d 739 (1949); Lukat v. Lukat, 21 Md. App. 354, 319 A.2d 818 (1974).

The elements of mutuality and separation need not coincide at the inception of the separation; indeed, an involuntary separation may later be transformed into a voluntary separation. Aronson v. Aronson, 115 Md. App. 78, 691 A.2d 785 (1997), cert. denied and appeal dismissed, 346 Md. 371, 697 A.2d 111 (1997).

Initial abandonment does not preclude separation from becoming voluntary. - The fact that a separation begins with the abandonment of one spouse by the other, or with one spouse merely resigned to the reality of the division, does not preclude a subsequent conversion of the disjunction into one that is voluntary. Wallace v. Wallace, 290 Md. 265, 429 A.2d 232 (1981).

Effect of desertion without spouse's agreement to live separately. - A divorce was properly denied a husband on the ground of mutual separation, where the chancellor found that the husband had originally deserted the wife, and further found that there had never been any agreement on the wife's part to live separate and apart at any time after the original involuntary separation. Courtney v. Courtney, 213 Md. 600, 132 A.2d 576 (1957).

Possibility that voluntary separation may be terminated by happening of condition subsequent. - A separation, by common consent of the parties, will not lose its voluntary character because of the mere possibility that it may be terminated upon the happening of a condition subsequent. Benson v. Benson, 204 Md. 601, 105 A.2d 733 (1954).

Phone sex did not constitute cohabitation. - Occasional instances of telephonic or electronic communication talking about sex, unaccompanied by intimate physical sexual contact, do not rise to the level of cohabitation; it was error to dismiss a husband's complaint for absolute divorce based on a separation of 12 months without cohabitation because the parties had engaged in phone sex within the year prior to the application for divorce as such conduct did not constitute cohabitation. Bergeris v. Bergeris, 217 Md. App. 71, 90 A.3d 553 (2014).

Offer of reconciliation during statutory period. - Offer of reconciliation before expiration of the statutory period destroys voluntary nature of the agreement to separate. Chalkley v. Chalkley, 236 Md. 329, 203 A.2d 877 (1964).

Error in granting divorce on ground of voluntary separation harmless. - Trial court's error in granting a divorce on the ground of voluntary separation was harmless, because the findings supported an award based on constructive desertion due to the husband's solicitation of extramarital sexual relationships on the Internet, heavy drinking, and verbal abuse. Flanagan v. Flanagan, 181 Md. App. 492, 956 A.2d 829 (2008).

An offer of reconciliation made by a wife before the expiration of the three years negatives the existence of the statutory requirement providing that the separation be voluntary on the part of both the husband and wife for the entire three-year (now twelve months) period. Moran v. Moran, 219 Md. 399, 149 A.2d 399 (1959).

E. Two-Year Separation.

One-year separation differentiated. - The essential difference, apart from time, between the one year separation and the two year separation embodied in (a)(5) is that the one year separation must be founded upon a ground which is consensual and not culpatory, manifesting an intention to permit the marriage relationship to be terminated in law, as well as in fact, without regard to fault; when one party to the divorce is not willing voluntarily to terminate the marriage relationship, the two year separation ground precludes a party from perpetually preventing his or her spouse from obtaining a decree of divorce. Aronson v. Aronson, 115 Md. App. 78, 691 A.2d 785 (1997), cert. denied and appeal dismissed, 346 Md. 371, 697 A.2d 111 (1997).

Elements. - The seventh (now fifth) ground is composed of the following elements: (1) that the parties shall have lived separate and apart for five years (now two years) preceding the filing of the divorce suit, (2) that there has been no cohabitation between them during the period of separation, and (3) that the separation was without interruption. Jackson v. Jackson, 13 Md. App. 725, 284 A.2d 654 (1971).

"Lived separate and apart." - For a husband and wife to come within the meaning of the phrase "lived separate and apart" as intended by the legislature, they should live apart in such a manner that those in the neighborhood may see that the husband and wife are not living together. Jackson v. Jackson, 13 Md. App. 725, 284 A.2d 654 (1971).

Ground must exist when suit filed. - The five-year (now two-year) separation period must exist when the suit is filed. Buckheit v. Buckheit, 10 Md. App. 526, 272 A.2d 54 (1970), cert. denied, 261 Md. 723 (1971).

Absence of sexual relations does not establish right to divorce. - Chancellor was in error in ruling that the husband could establish right to a divorce on the seventh (now fifth) ground by merely showing there had been no sexual relations between him and his wife during the critical five-year (now two-year) period, notwithstanding the fact that the husband admitted he had lived in the same house with his wife on numerous occasions during that time. Jackson v. Jackson, 13 Md. App. 725, 284 A.2d 654 (1971).

Party who provides corroborating witness insignificant. - The circuit court committed no error when it granted the wife a divorce based on a two-year separation, even though it was the husband, not the wife, who provided the corroborating witness to prove the two-year separation. Welsh v. Welsh, 135 Md. App. 29, 761 A.2d 949 (2000), cert denied, petition denied, 363 Md. 207, 768 A.2d 55 (2001).

F. Insanity.

Test is permanence and incurability of insanity. - It is not intended to grant the right of divorce only from those persons who are so violently insane that they have to be incarcerated at all times: The test is not the manifestation of the mental disease; it is permanence and incurability. Dodrer v. Dodrer, 183 Md. 413, 37 A.2d 919 (1944).

Purpose of requirement that defendant has been confined in institution. - The proviso that the party alleged to be insane shall have been confined in an insane asylum, hospital, or other similar institution for a period of not less than three years is inserted because that is to be a necessary test that for at least that period of time such party has been in such condition that he or she has been under the control of persons who conduct establishments for taking care of insane people. Dodrer v. Dodrer, 183 Md. 413, 37 A.2d 919 (1944).

Question of insanity not to be determined by general proof. - When the legislature added to the causes for divorce that of permanent and incurable insanity, it did not leave this question to be determined as other questions are determined, by general proof, but required certain specific facts to be shown. Bowersock v. Bowersock, 210 Md. 427, 123 A.2d 909 (1956).

Weight of testimony of psychiatrists. - The proviso that the court must find from the testimony of two or more physicians competent in psychiatry that the insanity is permanently incurable does not mean that, if two psychiatrists testify to that effect, the court must make such a finding. Dodrer v. Dodrer, 183 Md. 413, 37 A.2d 919 (1944); Bowersock v. Bowersock, 210 Md. 427, 123 A.2d 909 (1956).

The court may determine from the testimony of two or more physicians competent in psychiatry that such insanity is permanently incurable, with no hope of recovery, although the two psychiatrists do not so directly testify in the words of the statute. Bowersock v. Bowersock, 210 Md. 427, 123 A.2d 909 (1956).

Effect of chance of recovery. - Where one of two psychiatrists called in a husband's suit for divorce testified that defendant wife had a thirty to fifty percent chance of recovery, divorce should not have been granted on the grounds of insanity. Bowersock v. Bowersock, 210 Md. 427, 123 A.2d 909 (1956).

Cause of action arising during sanity. - Divorce for desertion may be obtained from insane defendant where the cause of action accrued during the sanity of the defendant, notwithstanding the subsequent insanity. Bowersock v. Bowersock, 210 Md. 427, 123 A.2d 909 (1956).

G. Cruelty.

Misconduct amounting to cruelty. - Any misconduct of a husband that endangers, or creates a reasonable apprehension that it will endanger, the wife's safety or health to a degree rendering it physically or mentally impracticable for her to properly discharge the marital duties constitutes cruelty within the meaning of this section. Das v. Das, 133 Md. App. 1, 754 A.2d 441 (2000).

III. Recrimination.

Recrimination as defense. - For a full discussion of the Maryland law in regard to the defense of recrimination in divorce actions, see Courson v. Courson, 208 Md. 171, 117 A.2d 850 (1955); Matakieff v. Matakieff, 246 Md. 23, 226 A.2d 887 (1967); Wallace v. Wallace, 290 Md. 265, 429 A.2d 232 (1981).

Recrimination is generally defined as a rule or doctrine which precludes one spouse from obtaining a divorce from the other, where the spouse seeking a divorce has himself or herself been guilty of conduct which would entitle the opposite spouse to a divorce. Sami v. Sami, 29 Md. App. 161, 347 A.2d 888 (1975), cert. denied, 277 Md. 740 (1976).

IV. Condonation.

Defined. - Condonation is forgiveness with implied condition that the marital offenses shall not be repeated and that the party offended shall be treated with conjugal kindness, and on breach of this condition, the right to remedy for former injuries revives. Smith v. Smith, 225 Md. 282, 170 A.2d 195 (1961); Dorsey v. Dorsey, 245 Md. 703, 227 A.2d 617 (1967); Stewart v. Stewart, 256 Md. 272, 260 A.2d 71 (1969); Moore v. Moore, 36 Md. App. 696, 375 A.2d 37 (1977).

Resumption of relations. - Resumption of marital relations is evidence of condonation. Moore v. Moore, 36 Md. App. 696, 375 A.2d 37 (1977).

Suspicion. - Mere suspicion is not sufficient to constitute condonation. McKim v. McKim, 225 Md. 311, 170 A.2d 208 (1961).

Burden of proof to overcome condonation. - To overcome a condonation defense, the condoning party has the burden of showing subsequent conduct sufficiently serious to effect a revival of the offense

condoned. Aronson v. Aronson, 115 Md. App. 78, 691 A.2d 785 (1997), cert. denied and appeal dismissed, 346 Md. 371, 697 A.2d 111 (1997).

Cruelty as reviving condonation. - Acts amounting to cruelty may operate to revive condoned adultery. Smith v. Smith, 225 Md. 282, 170 A.2d 195 (1961).

V. Effect of Limited Divorce.

Suit for divorce a vinculo not prevented by estoppel. - Where husband, on crossbill for divorce a vinculo matrimonii, was granted divorce a mensa et thoro, estoppel does not prevent him from bringing suit for divorce a vinculo matrimonii. Kruse v. Kruse, 183 Md. 369, 37 A.2d 898 (1944).

Divorce a mensa in favor of wife; wife's subsequent adultery. - Divorce a mensa in favor of the wife on the ground of abandonment does not prevent absolute divorce for wife's subsequent adultery. Williams v. Williams, 156 Md. 10, 142 A. 510 (1928).

7-103.1. Protective orders.

Repealed by Acts 2017, ch. 490, 1, effective October 1, 2017.

7-103.2. Child support and custody educational seminar.

(a) *Applicability.*- This section applies to an action for divorce in which issues of child support, custody, or visitation are raised.

(b) *Participation by all parties.*- Prior to granting a decree of divorce, the court may require all parties to participate in an educational seminar that is designed to educate parents about the effects, and to minimize the disruption, of a divorce on the lives of children.

(c) *Rules.*-

(1) The Court of Appeals shall adopt rules to implement this section.

(2) Rules adopted in accordance with this subsection shall:

(i) provide for the content of the seminar required under this section;

(ii) require successful completion of the seminar by all parties to the action within a certain time after the service of the original complaint upon the defendant;

(iii) establish sanctions for failure to successfully complete the seminar required under this section;

(iv) for purposes of funding the cost of the seminar, establish a fee that:

1. shall be assessed as costs; and

2. may be waived under appropriate circumstances; and

(v) establish criteria for exemption from the requirement that the parties participate in an educational seminar, except that a court may not exempt the parties from attending the educational seminar if there is any evidence of domestic violence or child abuse or neglect.

(d) *Contract to provide seminar.*- The seminar required under this section may be provided under contract with a public or private agency.

(e) *Seminar proceedings inadmissible in divorce proceedings.*- Unless the parties stipulate otherwise, any information about a party, including statements or reports, obtained from an educational seminar required by this section, is not admissible during the action for divorce of that party.

(f) *Attendance.*- This section may not be construed to require the parties to an action for divorce to attend the educational seminar together.

[1997, ch. 323.]

Editor's note. Section 2, ch. 323, Acts 1997, provides that "this Act shall be construed only prospectively and may not be applied or interpreted to have any effect on or application to any actions for divorce filed before October 1, 1997."

7-104. Offer or refusal of reconciliation.

(a) *Offer or attempt.*- In and of itself neither of the following is a defense to or a bar to a divorce:

(1) an unaccepted offer of reconciliation by a spouse; or

(2) a rejected attempt at reconciliation by a spouse.

(b) *Refusal or rejection.*- In and of itself neither of the following is a defense to, a bar to, or a ground for a divorce:

(1) the refusal of a spouse to accept an offer of reconciliation made by the other spouse; or

(2) the rejection by a spouse of an attempt at reconciliation made by the other spouse.

[An. Code 1957, art. 16, 26B; 1984, ch. 296, 2.]

Maryland Law Review. For note, "Offers of Reconciliation in Maryland Divorce Law," see 30 Md. L. Rev. 49 (1970).

Legislative purpose. - The legislative purpose of limiting effect of offers of reconciliation, as applied to voluntary separations, was to alter the prior law so as to prevent an offer of or attempt at reconciliation from destroying the status of an existing voluntary separation. Carney v. Carney, 16 Md. App. 243, 295 A.2d 792 (1972).

Applicability of provisions on reconciliation. - The provisions relating to an offer or refusal of reconciliation are not applicable where the separation of the parties had not taken place at the times the husband's offers of reconciliation were made. Carney v. Carney, 16 Md. App. 243, 295 A.2d 792 (1972).

Failure to seek reconciliation. - Wife's acquiescence in original separation and failure to seek reconciliation made it voluntary for the statutory period. Miller v. Miller, 237 Md. 237, 205 A.2d 794 (1965).

Evidence of offers of reconciliation for determining alimony. - This section does not mean that in determining fault for the purpose of alimony where divorce is obtained on a nonculpable divorce ground, the party deserted should not be permitted to offer evidence on his attempts to effect a reconciliation as bearing upon that fault. Rhoad v. Rhoad, 273 Md. 459, 330 A.2d 192 (1975).

Quoted in Aronson v. Aronson, 115 Md. App. 78, 691 A.2d 785 (1997), cert. denied and appeal dismissed, 346 Md. 371, 697 A.2d 111 (1997).

7-105. Restoration of former name.

(a) *In general.*- In granting a decree of absolute divorce or on motion of a party filed within 18 months after a final decree of absolute divorce is entered, the court shall change the name of the requesting party to either the name given the party at birth or any other former name the party wishes to use if:

(1) the party took a new name on marriage and no longer wishes to use it;

(2) the party asks for the change of name; and

(3) the purpose of the party is not illegal, fraudulent, or immoral.

(b) *Maryland Rules inapplicable.*- The provisions of Maryland Rule 15-901 relating to an action for a change of name do not apply to a change of name under this section.

[An. Code 1957, art. 16, 32; 1984, ch. 296, 2; 2017, chs. 624, 625.]

Effect of amendments. Chapters 624 and 625, Acts 2017, effective October 1, 2017, made identical changes. Each added (b) and the (a) designation; and in the introductory language of (a) added "or on motion of a party filed within 18 months after a final decree of absolute divorce is entered" and substituted "name of the requesting party" for "name of a party."

Abuse of discretion to deny restoration of prenuptial name. - It is an abuse of discretion to deny a woman who requests it at the time of divorce the restoration of her prenuptial name, absent illegal, fraudulent or immoral purposes. Klein v. Klein, 36 Md. App. 177, 373 A.2d 86 (1977).

7-106. Record of divorce decrees.

The clerk of the circuit court for each county shall record all final decrees in proceedings for divorce in that county and keep the record readily accessible in some permanent form.

[An. Code 1957, art. 17, 34; 1984, ch. 296, 2; 1995, ch. 155.]

Cited in Parker v. Robins, 68 Md. App. 597, 514 A.2d 1237 (1986).

7-107. Award of reasonable and necessary expenses.

(a) *"Reasonable and necessary expense" defined.*- In this section, "reasonable and necessary expense" includes:

(1) suit money;

(2) counsel fees; and

(3) costs.

(b) *Award authorized.*- At any point in a proceeding under this title, the court may order either party to pay to the other party an amount for the reasonable and necessary expense of prosecuting or defending the proceeding.

(c) *Considerations by court.*- Before ordering the payment, the court shall consider:

(1) the financial resources and financial needs of both parties; and

(2) whether there was substantial justification for prosecuting or defending the proceeding.

(d) *Lack of substantial justification and good cause.*- Upon a finding by the court that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, and absent a finding by the court of good cause to the contrary, the court shall award to the other party the reasonable and necessary expense of prosecuting or defending the proceeding.

(e) *Reimbursement.*- The court may award reimbursement for any reasonable and necessary expense that has previously been paid.

(f) *Counsel fees.*- As to any amount awarded for counsel fees, the court may:

(1) order that the amount awarded be paid directly to the lawyer; and

(2) enter judgment in favor of the lawyer.

[1999, ch. 391.]

Editor's note. Section 2, ch. 391, Acts 1999, provides that "this Act shall apply only to cases filed on or after October 1, 1999."

University of Baltimore Law Forum. For an article, "Fee-Shifting to Promote the Public Interest in Maryland," see, 42 U. Balt. L. F. 38 (2011).

For a 2012 development, "Tydings & Rosenberg, LLP V. Zorzit: A Law Firm That Represented the 'Nonmonied' Spouse Had the Right to Intervene in a Domestic Relations Case to Recover Attorney's Fees Earned When the Parties Were Not Protecting the Firm's Interests," see, 42 U. Balt. L. F. 245 (2012).

Award of counsel fees held proper. - Trial court properly considered husband's earning capacity in determining a marital award and did not abuse its discretion by ordering the husband to pay $300,000 of $820,699 his wife incurred in attorney and experts' fees, but the appellate court found that the trial court improperly valued the husband's interest in a helicopter service and erred by finding that the husband had dissipated $964,175 of the parties' marital assets, and it vacated the trial court's award of $2.1 million in marital property to the wife and remanded the case for reconsideration of the marital award. McCleary v. McCleary, 150 Md. App. 448, 822 A.2d 460 (2002), cert. denied, 374 Md. 583, 824 A.2d 59 (2003).

When, in proceedings regarding child custody, visitation and support, a husband was ordered to pay a wife attorney's fees even though the wife was provided with free legal representation, the husband's reliance on the language of this section to show the award was improper was misplaced because (1) the award was made pursuant to 12-103 of this article, and (2) the language of this section did not "clearly contemplate" that an award of attorney's fees was proper only if a party incurred legal fees. Henriquez v. Henriquez, 185 Md. App. 465, 971 A.2d 345 (2009), aff'd, 413 Md. 287, 992 A.2d 446 (2010).

In proceedings regarding child custody, visitation and support, it was not an abuse of discretion to award, pursuant to 12-103 of this article, attorney's fees to a wife who was provided with free legal representation because, inter alia, nothing in the language or legislative history of the various statutes in the Family Law

article authorizing awards of attorney's fees, including 12-103, 7-107, 7-107, 8-214, and 11-110 of this article, indicated a legislative intent to require that a party actually incur such fees. Henriquez v. Henriquez, 185 Md. App. 465, 971 A.2d 345 (2009), aff'd, 413 Md. 287, 992 A.2d 446 (2010).

Award of counsel fees held improper. - Trial court misapplied the statutory criteria for awarding attorney's fees to the wife under Md. Code Ann., Fam. Law 7-107(c) and 12-203(b), as the trial court did not satisfactorily consider the financial status and needs of the husband. Reichert v. Hornbeck, 210 Md. App. 282, 63 A.3d 76 (2013).

Attorney's right to intervene to collect fees. - As the trial court was authorized by (f) to enter a judgment in favor of a law firm for fees it earned while representing a "nonmonied" spouse, Md. Rule 2-214(a)(2) provided the firm with the right to intervene in the parties' domestic relations case in order to recover those fees. Tydings & Rosenberg, LLP v. Zorzit, 422 Md. 582, 30 A.3d 984 (2011).

Applied in Henriquez v. Henriquez, 413 Md. 287, 992 A.2d 446 (2010).

Quoted in Meyr v. Meyr, 195 Md. App. 524, 7 A.3d 125 (2010).

Cited in Wells v. Wells, 168 Md. App. 382, 896 A.2d 1082 (2006).