

Family Law Template

Nullity:

Jurisdiction-

1. **S51** constitution (xxii) divorce and matrimonial causes
2. **S4(b)** FLA matrimonial cause- annulment
3. **S44(1A)(b)** proceedings issued by 1/both
4. **S39(4)(b)** on date of application, 1 party Aus citizen/ resident/ present in Aus?

Grounds **s23B(1)** Marriages Act-

5. Bigamy- at time of marriage 1 party lawfully married to someone else?
6. Prohibited r/ship- descendant/ sibling?
S23B(2) Marriages Act
7. Lack of essential formalities- not complying with **s48** MA, void under **s23B(1c)**. Rare ground, **s88C(1a)** overseas marriages valid if valid under local law when solemnised
8. Lack of consent- duress/ fraud **s23B(1d)** MA. Party mistaken as to person's identity, nature of ceremony, mentally incapable of understanding ceremony.

Examples of Duress:

- suicide threat: **Cooper V Crane [1891]**
- influence of bride's mother: **Ford v Stier**
- threats by bride's father: **Parojcic v Parojcic**
- threat of prosecution for carnal knowledge: **Williams v Williams (1965) 7 FLR 309**
- threat of prosecution and imprisonment: **Buckland v Buckland [1967] 2 WLR 1506**
- parental coercion: **In Marriage of S (1980)**
- proximity to ceremony: **Teves and Campomayor (1995) FLC 92-578**

Examples of Fraud:

- fraudulent impersonation: **C v C [1942]**
- marriage to remain in Australia: **Deniz and Deniz (1977); Hosking and Hosking (1995)**

- No fraud or duress found: **Suria and Suria (1977); Otway and Otway (1987)**
- Intention not to cohabit: **Osman and Mourrali (1990) FLC 92-111**
- Subjective intent of parties irrelevant: **Al Soukmani and Al Soukmani (1980)**
Example of mistake as to identity:
 - husband a hermaphrodite: **C and D**

Example of mistake as to the Ceremony

- Mistake as to effect: **Bell v Graham (1859)**
- Mistake as to nature of ceremony: **Mehta v Mehta [1945]; Najjari v Houlayce (1991)**
- No mistake as to nature of ceremony: **Official Trustee in Bankruptcy v Edwards**

Mental Incapacity

- Requirement to understand nature of ceremony: **In the Estate of Park, Park v Park**
- No requirement to understand consequences of marriage: **AK and NC**

Divorce:

Jurisdiction-

1. **S51** constitution (xxii) divorce and matrimonial causes
2. **S4(a)** FLA matrimonial cause- divorce order re marriage
3. **S44(1A)(a)** proceedings issued by 1/both
4. **S39(3)** on date of application, 1 party Aus citizen/ resident/ present in Aus?

Grounds-

5. **S48(2)** parties separated (communicated) 12m before filing application for divorce?
6. **S49(1)** cause irrelevant
 - **Pavey**- effective breakdown of marriage. Must examine each r/ship separately. Reasonable satisfaction= BOP. Parties must explain why they've stayed in same residence

- **Clarke**- physical separation not necessary
 - **Franks**- 1 party in prison= no by itself
 - **Todd**- compare r/ship before separation to after
 - **Falk**- substantial breakdown, doesn't have to be complete breakdown
 - **Spanos**- residual elements of previous r/ship may exist
7. **S49(2)** parties separated if living in same residence?
 - **Watkins**- look at sleeping arrangements
 - **Wiggins**- 2 household test
 - **Hodges**- divisible task test
 - **Potter**- residing together for sake of kids
 - **Pavey**- corroborative evidence may be required
 8. **S48(2)** intention to separate?
 9. Action upon that intention?
 10. Communication of this to other party?
 11. **S48(3)** reasonable likelihood of resuming cohabitation?
 - **Todd**- bilateral intention
 - **Painter**- intent to marry another person= no
 - **Bailey**- long period of separation= no
 - **Koufaladis**- insanity of 1st wife, proposed 2nd wife= no
 12. **S50** single resumption of cohabitation less than 3 months?
 - **Todd**- substantial resumption
 - **Clarke**- mere settling of differences with intention to resume= no
 - **Perry**- question of fact and degree
 - **Mummery**- bilateral intention to resume
 - **Todd**- bilateral intent must be acted on