

## Family Law Outline Part II

### VII. Divorce & Dissolution

#### A. Introduction

1. Traditional fault grounds: adultery, physical cruelty, & desertion
2. Statutory fault grounds: Insanity, conviction of a crime, habitual drunkenness, drug conviction & mental incapacity
3. All U.S. jurisdictions now have enacted some form of no-fault divorce
4. FL. **Purpose** Statute—61.001
  - a. Chapter shall be **LIBERALLY CONSTRUED**
  - b. **Purposes are:**
    - 1) **Preserve the integrity of marriage and to safeguard meaningful family relationships**
    - 2) **Promote the amicable settlement of disputes that arise b/w parties to the marriage**
    - 3) **Mitigate the potential harm to the spouses and their kids by the process of legal dissolution of the marriage**

#### B. Divorce Jurisdiction

1. Federal courts don't have jurisdiction to grant divorces or alimony, award spousal support, or determine child custody issues
2. Majority of state courts req strict compliance w/divorce jurisdiction statutes, service of process statutes and substantive divorce grounds & defense statutes
3. **Failure to comply & a resulting invalid divorce decree results in MALPRACTICE.**
4. Domiciliary Requirement
  - a. SMJ for divorce lies w/states.
    - 1) "Domestic relations exceptions" to federal court SMJ over diversity cases
    - 2) A spouse's domicile w/in a state is a sufficient basis for that state's divorce jurisdiction
  - b. Policy: Marriage is a legal status based on K and regulating state must have a substantial relationship w/a spouse (as in K dispute)
  - c. Domicile=Person's physical presence w/intent to make place home
    - 1) Differs from residence b/c req's subjective intent to remain more or less permanently
    - 2) Residence is usually interpreted as domicile
  - d. A state's particular jurisdiction rules determine its jurisdiction for divorce
    - 1) FL. Statute 61.021: 1 of parties must be a resident of FL. for 6 months prior to filing of dissolution petition. Resident need not be physically w/in the