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## Domestic Relations—Annulment: Fraud

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# THE COURT OF APPEALS, 1951 TERM

## VI. DOMESTIC RELATIONS

### *Annulment: Fraud*

Because of the stringent divorce law in New York,<sup>1</sup> the annulment provisions are much more widely used than in other jurisdictions;<sup>2</sup> the fraud subdivision<sup>3</sup> being resorted to most frequently.<sup>4</sup> The traditional approach to what acts of fraud are sufficient to void the marital status was generally couched in terms such that the fraud must go to the "essentials"<sup>5</sup> of the marriage relation. Since *di Lorenzo v. di Lorenzo*<sup>6</sup> was decided in 1903, the New York test has been modified to the extent that no longer must the fraud go to the "essentials" but only must be material.<sup>7</sup> The test was restated in *Schonfeld v. Schonfeld*<sup>8</sup> where it was held that any fraud is adequate which is of such a nature as to deceive an ordinary prudent person where, had it not been practiced, that party deceived would not have consented to the marriage.

The test may be formulated thusly: any deliberate<sup>9</sup> misrepresentation<sup>10</sup> of fact<sup>11</sup> or intention<sup>12</sup> inducing consent is such fraud to make a marriage voidable, provided the misrepresentation is

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1. The only ground for divorce is adultery. C. P. A. §1147.

2. N. Y. Supreme Court Judge Greenberg, *New York's Perjury Mills*, 144 AMERICAN MAGAZINE No. 4, p. 46 at 147 (Oct. 1947).

3. DOMESTIC RELATIONS LAW §7 (4). C. P. A. §1139.

4. N. Y. Official Referee Faber, *The Growing Annulment Evil*, 72 WOMEN'S HOME COMPANION No. 9, p. 20 (Sept. 1945).

5. *Frisk v. Frisk*, 6 App. Div. 432, 39 N. Y. Supp. 537 (1st Dep't 1896). (consortium and cohabitation).

6. 174 N. Y. 467, 67 N. E. 63 (1903).

7. "The language of the statute [DOMESTIC RELATIONS LAW §7 (4)] is broad and warrants but the one reasonable construction, that had it not been practiced, the party deceived would not have consented to the marriage." *di Lorenzo v. di Lorenzo*, 174 N. Y. 467, 471, 67 N. E. 63, 64 (1903).

8. 260 N. Y. 477, 184 N. E. 60 (1933).

9. *Chavias v. Chavias*, 194 App. Div. 904, 184 N. Y. Supp. 761 (2d Dep't 1920).

10. *Schonfeld v. Schonfeld*, 260 N. Y. 477, 184 N. E. 60 (1933).

11. *Ibid.* (financial position); *di Lorenzo v. di Lorenzo*, 174 N. Y. 467, 67 N. E. 63 (1903) (child exhibited as offspring of intercourse with plaintiff, when child was someone else's); *Beard v. Beard*, 238 N. Y. 599, 144 N. E. 908 (1924) (chastity); *Laage v. Laage*, 176 Misc. 190, 26 N. Y. S. 2d 874 (Sup. Ct. 1941) (citizenship); *cf. Yelin v. Yelin*, 142 Misc. 533, 255 N. Y. Supp. 708 (Sup. Ct. 1929) (health).

12. *Bloom v. Bloom*, 76 N. Y. S. 2d 890 (Sup. Ct. 1947) (love and affection); *Rutstein v. Rutstein*, 221 App. Div. 70, 222 N. Y. Supp. 688 (1st Dep't 1927) (to have religious ceremony after a civil ceremony); *Richardson v. Richardson*, 200 Misc. 778, 103 N. Y. S. 2d 219 (Sup. Ct. 1951) (to have children); *Miller v. Miller*, 132 Misc. 121, 228 N. Y. Supp. 657 (Sup. Ct. 1928) (intercourse).

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material<sup>13</sup> to a reasonable man<sup>14</sup> and would deceive an ordinarily prudent person.<sup>15</sup> Any concealment<sup>16</sup> or non-disclosure<sup>17</sup> of facts or intention<sup>18</sup> contrary to those implied by the mere assumption of the marital relationship stand substantially on the same footing with express misrepresentation of the same facts. If there has been no cohabitation after the discovery of the fraud,<sup>19</sup> the fact that the marriage has been consummated is of no significance.<sup>20</sup>

New York's requirements for annulling a marriage for fraud are thus substantially the same as those necessary to rescind a contract for innocent misrepresentation.<sup>21</sup> The New York Court has never limited the action to any particular misrepresentation.<sup>22</sup>

Annulment based on fraud has been denied on several grounds, the chief of which is that the representation was not false when made.<sup>23</sup> Another basis is the absence of the corroboration required by statute<sup>24</sup> when the sole evidence is a declaration or confession of either spouse.<sup>25</sup> Also a grounds for denial has been the condonation by voluntary cohabitation after discovery of the fraud.<sup>26</sup> Of course, if the representation is not material the action fails.<sup>27</sup> This is an objective test.<sup>28</sup>

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13. *Shonfeld v. Shonfeld*, 260 N. Y. 477, 479, 184 N. E. 60, 61 (1933).

14. *Ibid.*

15. *Ibid.*

16. *Giannotti v. Giannotti*, 60 N. Y. S. 2d 74 (Sup. Ct. 1946) (criminal record); *Svenson v. Svenson*, 178 N. Y. 54, 70, N. E. 120 (1904) (health).

17. *Jacobson v. Jacobson*, 207 App. Div. 238, 239, 202 N. Y. Supp. 96, 97 (2d Dep't 1923) (venereal disease).

18. *Moore v. Moore*, 94 Misc. 370, 157 N. Y. Supp. 819 (Sup. Ct. 1916) (to desert premaritally pregnant wife without consummating).

19. C. P. A. § 1139; *De Martino v. De Martino*, 78 N. Y. S. 2d 503 (Sup. Ct. 1948).

20. *Domschke v. Domschke*, 138 App. Div. 454, 122 N. Y. Supp. 892 (2d Dep't 1910).

21. RESTATEMENT, CONTRACTS §§ 470(2), 476(1); cf. *Schonfeld v. Schonfeld*, *supra* n. 10.

22. *Supra* n. 10.

23. *Ehrlich v. Ehrlich*, 181 Misc. 1057, 49 N. Y. S. 2d 863 (Sup. Ct. 1943) (wife premaritally pregnant by husband).

24. C. P. A. § 1143.

25. See 1 BFL. L. REV. 54 (1951).

26. *Palmateer v. Palmateer*, 193 Misc. 710, 85 N. Y. S. 2d 425 (Sup. Ct. 1949).

27. *di Lorenzo v. di Lorenzo*, 174 N. Y. 467, 67 N. E. 63 (1903).

28. *Supra* n. 10.

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The court during its last term formulated a new test in denying an annulment on grounds of fraud in *Woronzoff-Daschkoff v. Woronzoff-Daschkoff*.<sup>29</sup> The defendant represented that he always earned his own living, had never taken money from any women, that his purpose in marrying was to contribute to the plaintiff's (wife) happiness and faithfully perform his husbandly duties, that his social position was high in Europe and New York. All these representations were false when made and the plaintiff relied on them in giving her consent to the marriage.

Desmond, J. for the court said that the defendant performed the *fundamental* duties of the marriage relationship and reformulated the test so that the fraud must go to the matters *vital* to the marriage relationship *only*, citing *Lapides v. Lapides*.<sup>30</sup> The court further stated that fraudulent practice in respect to character, fortune, health or the like does not render a marriage void. This is of course dictum as the misrepresentations of the defendant were not material under previous standards. Nevertheless the dictum if followed in succeeding cases will be a return to a great extent to the *essentialia* doctrine. To what degree this return is intended is evidenced by a speech delivered by Judge Desmond where he recommended that annulment actions be limited to certain types of fraudulent misrepresentations—such as those “going to the essence of the marriage.”<sup>31</sup>

### *Support: Parent-Child*

In practically all American jurisdictions, a father has a legal as well as a moral duty to support his minor children.<sup>32</sup> The legal problems arising in this connection relate primarily to the methods of enforcing the performance of this duty.<sup>33</sup> This was the question before the Court in *Langerman v. Langerman*.<sup>34</sup> The infant plaintiffs brought an action in Supreme Court seeking support from their father, over and above the provisions made for them in a Nevada divorce decree. The complaint was dismissed upon the ground that the court did not have jurisdiction to order the support of children in an action brought for that sole purpose.

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29. 303 N. Y. 506, 104 N. E. 2d 877 (1952), *rev'g* 278 App. Div. 924, 105 N. Y. S. 2d 910 (1st Dep't 1951).

30. 254 N. Y. 73, 171 N. E. 911 (1930). *But see, Schonfeld v. Schonfeld, supra* n. 10.

31. N. Y. TIMES, Apr. 10, 1948, p. 16, col. 1.

32. 4 VERNIER, AMERICAN FAMILY LAWS 56 (1935).

33. MADDEN, PERSONS AND DOMESTIC RELATIONS 392 (1931).

34. 303 N. Y. 465, 104 N. E. 2d 857 (1952).