

December 2019

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Recommended Citation

Frank C. Conley, *Indignities as Grounds for Divorce*, 1 Wyo. L.J. (1947)
Available at: <https://scholarship.law.uwyo.edu/wlj/vol1/iss4/4>

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INDIGNITIES AS GROUNDS FOR DIVORCE

A number of states, and two Federal Territories, have adopted as grounds for divorce "indignities" that render the complaining party's condition "intolerable"¹ or his or her life "burdensome";² and several contain both conditions.³ Although there is a difference in the lay definition of "intolerable" and "burdensome",⁴ yet the courts apparently have not distinguished the meaning when rendering their decisions. Four of these statutes speak of "indignities to the person," two others of "personal indignities" and Wyoming and Missouri's statutes simply speak of "indignities" without other description. The courts have not differed in their interpretation of "indignities to the person" and "indignities to the other". Both mean indignities to the complaining spouse.⁵

All of the states, with the exception of North Carolina, that include "indignities" as grounds for divorce, have also included in their statutes "cruelty" as a separate grounds. It is important to note, then, that the right to a divorce for indignities is separate and apart from the relief for cruelty.⁶ As a general rule, cruelty must consist of conduct which inflicts or threatens infliction of bodily harm.⁷ Some courts have said that, generally speaking, indignities may consist of rudeness, vulgarity, unmerited reproach, haughtiness, contumely, studied neg-

1. Ark. (Crawford and Moses) 1921 sec. 49-3500 . . . "or shall offer such indignities to the person of the other as shall render his or her condition intolerable".
Tenn. Code (Michie's) 1938 sec. 2-8427 . . . "that the husband has offered such indignities to the wife's person as to render her condition intolerable".
Mo. Stat. Ann. 1939 sec. 1514 . . . "or shall offer such indignities to the other as shall render his or her condition intolerable".
Wyo. Comp. Stat. 1945 sec. 3-5905 . . . "when either party shall offer such indignities to the other, as shall render his or her condition intolerable".
2. Ore. Comp. Laws 1940 sec. 32-1117 . . . "or personal indignities rendering life burdensome".
Wash. Rev. Stat. (Remington) 1932 sec. 982 . . . "or personal indignities rendering life burdensome".
3. N. C. Gen. Stat. 1943 sec. 50-7 . . . "or offer such indignities to the person of the other as to render his or her condition intolerable and life burdensome".
Pa. Stat. (Purdon's) 1936 sec. 23-10 . . . "shall have offered such indignities to the person of the injured and innocent spouse, as to render his or condition intolerable and life burdensome".
It is interesting to note that the Statute of Tennessee has a unique provision in that the wife alone can bring action. This was the law in Pennsylvania until the Divorce Law of 1929, Pub. Law. 1237 placed the husband and wife on the same equality.
The following states have similar statutes but for the purposes of this article will not be considered: Ariz. Code 1939 sec. 50-315 . . . "excesses, cruel treatment or outrages". R. I. Gen. Laws 1938 sec. 416-2 . . . "gross misbehavior and wickedness".
Tex. Stat. (Vernon's) 1936 sec. 4629 . . . "excesses, cruel treatment or outrages".
4. Webster's Dictionary (1936) "*Intolerable*—not capable of being borne". "*Burdensome*—grievous to be borne".
5. Johnston v. Johnston, 260 S.W. 770 (Mo. App. 1924); Deutsch v. Deutsch 141 Pa. Super 339, 14 A. (2d) 586 (1940).
6. 27 C.J.S. 586 "The offense of inflicting personal indignities on a spouse, although similar to that of cruelty, includes conduct which is not within the definition of cruelty as a ground for divorce". See Bassett v. Bassett, 280 S.W. 430, 435 (Mo. App. 1926); Sleight v. Sleight, 119 Pa. Super. 300, 181 Atl. 69 (1935); Hepworth v. Hepworth, 129 Pa. Super. 360, 195 Atl. 924 (1937); Sullivan v. Sullivan, 52 Wash. 160, 100 Pac. 321 (1909); In McDevitt v. McDevitt 148 Pa. Super. 522, 25 A. (2d) 853 (1942), the husband was granted divorce for indignities to the person where wife weighed 200 pounds and he weighed 145. Throughout the lengthy testimony it was shown that although she resorted to force occasionally, her chief weapon was her tongue. Charge of cruelty was disallowed but divorce was granted for indignities.
7. Madden, Persons and Domestic Relations 268 (1931).

lect, intentional incivility, manifest disdain, abusive language, malignant ridicule and every other plain manifestation of settled hate and estrangement.⁸ The indignities must amount to a species of mental cruelty⁹ but bodily harm is not required.¹⁰

In Wyoming, some doubt arises as to the distinction between cruelty and indignities.¹¹ In *Bonham v. Bonham*,¹² a divorce was sought on grounds of cruelty and the Supreme Court of Wyoming held that mere austerity of temper, petulance of manner, rudeness of language, a want of civil attention; even occasional sallies of passion, if they do not threaten bodily harm, do not constitute cruelty. In *Mahoney v. Mahoney*,¹³ the same court in granting divorce for indignities said, "Where defendant is guilty of indignities rendering plaintiff's life intolerable, impairment of health need not be shown", and indicated that it was not required in case of cruelty. But the court seems to have reaffirmed the reasoning of the *Bonham Case* fifteen years later in *Schultz v. Schultz*¹⁴ where divorce was denied on grounds of cruelty and indignities. The facts of that case consisted of only general statements of misbehavior or conclusions of the parties and there was no evidence of threatened bodily harm. In contrast, the Supreme Court of Washington in the *Sabot Case*¹⁵ made a distinction when it defined, "Indifference is an indignity and unconcealed aversion is a cruelty". This indicates that they are of the opinion the difference is apparently in the degree of severity of the act or acts committed.

Proceeding as to what does and what does not amount to indignities, we are faced with anomaly that there is no adequate definition. This fact is best brought out in *Wick v. Wick*¹⁶ in which the Supreme Court of Pennsylvania stated that the term, "indignities to the person of a wife", as a cause for divorce, had been

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8. *Sutherland v. Sutherland*, 188 Ark. 955, 68 S.W. (2d) 1022, 1023 (1934); *Welborn v. Welborn*, 189 Ark 1063, 76 S.W. (2d) 98 (1934); *Deutsch v. Deutsch*, 141 Pa. Super. 339, 14 A. (2d) 586 (1940); *Evans v. Evans*, 152 Pa. Super. 257, 31 A. (2d) 590 (1943); *Eberly v. Eberly*, 154 Pa. Super. 641, 36 A. (2d) 729 (1944); *Hogsett v. Hogsett*, 83 S.W. (2d) 152 (Mo. App. 1935).
 9. *Boehme v. Boehme*, 72 S.W. (2d) 115 (Mo. App. 1934); *Key v. Key*, 93 S. W. (2d) 256 (Mo. App. 1936); *Wirthman v. Wirthman*, 225 Mo. A. 692, 39 S.W. (2d) 404 (1931); *Bowers v. Bowers*, 98 Ore. 548, 194 Pac. 697 (1921).
 10. *Wittmer v. Wittmer*, 151 Pa. Super. 362, 30 A. (2d) 174, 176 (1943); *Martin v. Martin*, 154 Pa. Super. 313, 35 A. (2d) 546, 548 (1944); *Pearce v. Pearce*, 226 N. C. 307, 37 S.E. (2d) 904, 905 (1946).
 11. Because the Tennessee Statute (see footnote 1.) does not permit the husband to bring action against the wife on grounds of indignities little distinction has been made between cruelty and indignities. See *Stargel v. Stargel*, 107 S.W. (2d) 520 (Tenn. App. 1937).
 12. 25 Wyo. 449, 172 Pac. 333 (1918).
 13. 43 Wyo. 157, 299 Pac. 273 (1931).
 14. 46 Wyo. 121, 23 P. (2d) 351 (1933).
 15. *Sabot v. Sabot*, 97 Wash. 395, 166 Pac. 624 (1917).
 16. 352 Pa. Super. 25, 42 A. (2d) 76 (1945).
17. *Taylor v. Taylor*, 142 Pa. Super. 441, 16 A. (2d) 651 (1940); *Whitewell v. Whitewell*, 318 Mo. 476, 300 S.W. 455 (1927); *Bell v. Bell*, 179 Ark. 171, 14 S.W. (2d) 551 (1929); In *Taylor v. Taylor*, 76 N. C. 433, 436 (1877) the Supreme Court of North Carolina said, "No deviating rule has been yet agreed upon by the courts or probably can be, which will apply to all cases in determining what indignities are grounds for divorce because they render the condition of the party injured intolerable. The station in life, the temperament and state of health, habits and feelings of different persons are so unlike that treatment which would send the broken heart of one to the grave would make no sensible impression upon another". See *Sanders v. Sanders*, 157 N. C. 229, 72 S.E. 876, 878 (1911).

in the statutes since 1785 and that experience had shown it is impossible to embrace in a single definition the great variety of conduct intended to be included in the meaning of the words used by the Legislature and at the same time to exclude conduct not within the legislative description. It is also impossible to lay down any rules that will apply to all cases, in determining what indignities are grounds for divorce. The legislatures apparently chose to leave the subject at large, and by the general words employed in the statutes, designed to leave such case to be determined according to its own peculiar circumstances.¹⁷

Perhaps the best way to approach this subject is in a negative manner, keeping in mind the social and natural value of maintaining the security of the marriage bond. In *Schultz v. Schultz*,¹⁸ the Supreme Court of Wyoming refused to grant a divorce to a wife because of insufficient evidence to authorize the decree, saying, "Mere general statements of misbehavior or conclusions of the parties will not suffice. The court must be placed in possession of the facts of the case, and these facts must fully establish a statutory ground for divorce, in order to invoke the great judicial power to rend assunder the family relation, a relation on which civilized society so greatly relies for its support." Generally the courts have followed the line of reasoning in holding that a single act of indignity is not sufficient to make out a case entitling the complaining party to a divorce on ground of indignities.¹⁹ The courts seem unanimous in holding that the misconduct must be continued and must have existed over a period of time.²⁰ It has been held that slight altercations, incompatibility or temporary irritation are insufficient indignities²¹ and refusal of a wife to indulge in sexual intercourse does not satisfy divorce requirements.²²

Turning to the positive side of the problem, it is apparent that generally the courts will dissolve the marital relation if the continued status of the parties will be a detriment to them as individuals and to society itself. The Springfield Court of Appeals of Missouri²³ has stated, "There is little compelling evidence corroborating plaintiff but from the cold record it is clear to us that there is not even a remote possibility that a reconciliation could be effected and the parties live happily together in the future". The courts seem to hold that it is not the

18. 46 Wyo. 121, 23 P. (2d) 351 (1933).

19. *Johnston v. Johnston*, 260 S.W. 770 (Mo. App. 1924); *Llewellyn v. Llewellyn*, 229 Mo. App. 1178, 88 S.W. (2d) 235 (1934); *Othmer v. Othmer*, 158 Pa. Super. 384, 45 A. (2d) 389 (1946); *Denison v. Denison*, 189 Ark. 239, 71 S.W. (2d) 1055 (1934); *Settles v. Settles*, 195 S.W. (2d) 59, (Ark. 1946).

20. *Kamp v. Kamp*, 36 Wyo. 310, 254 Pac. 689 (1927); *Cain v. Cain*, 145 Ark. 224, 224 S.W. 481 (1920); See *Pearce v. Pearce*, 226 N. C. 307, 37 S.E. (2d) 904, 905 (1946); *Stevens v. Stevens*, 158 S.W. (2d) 238 (Mo. App. 1942); *Deutsch v. Deutsch*, 141 Pa. Super. 339, 14 A. (2d) 586 (1940); *Wittmer v. Wittmer*, 151 Pa. Super. 362, 30 A. (2d) 174, 176 (1943); *Sabot v. Sabot*, 97 Wash. 395, 166 Pac. 624 (1917).

21. In *Arnold v. Arnold*, 15 Ark. 32, 170 S.W. 486 (1914) the Supreme Court of Arkansas said in refusing divorce for indignities: "A little confessed, a little endured, a little forgiven, and all is cured, daily practiced from the first by this now unhappy couple, would have kept closed forever the Pandora's box of matrimonial sorrows from which relief is now sought. But relief will not be granted in such cases." See *Sutherland v. Sutherland*, 188 Ark. 955, 68 S.W. (2d) 1022 (1934); *Taylor v. Taylor*, 142 Pa. Super. 441, 16 A. (2d) 651 (1940); *Fite v. Fite*, 196 S.W. (2d) 65 (Mo. App. 1946).

22. *James v. James*, 126 Pa. Super. 479, 191 Atl. 191 (1937).

23. *White v. White*, 180 S.W. (2d) 229 (Mo. App. 1944); *Contra*, *Bobst v. Bobst*, 160 Pa. Super. 340, 51 A. (2d) 414 (1947).

words used nor the acts done; it is the effect of them upon the aggrieved party that is determinative.²⁴

In considering the divorce problem it must be realized that in the matrimonial union there are trials causing much weariness and suffering which parties to the marriage must bear.²⁵ The policy of the state, as well as the sacred nature of the marriage covenant, requires patient endurance.²⁶ There are, however, insults and abuses which are outside the realm of the marriage covenant, submission to which was never contemplated and which are not expected to be borne.²⁷

What does and what does not constitute indignities as grounds for divorce, whether they are intolerable or burdensome, will vary with the times. However, it is apparent that the offending party must be guilty of conduct that is of such nature as to render it necessary for the public good and the individuals themselves to be separated. It is the general holding of the courts that mere faults of temper and of manner do not constitute grounds; nor does mere incompatibility of the parties. A single act of indignity does not constitute conduct having the stature of intolerability; it must be persisted in either continually or recurrently so that it is beyond reasonable endurance. Not only the animus of the offender but also the subjective effect upon the victim is considered.²⁸ What may be an indignity to one person may not be to another. The courts in arriving at their decisions generally will consider the cumulative effects of the petitioner's treatment in determining if the personal and public objects of marriage have been in fact destroyed beyond rehabilitation.

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24. *Thompson v. Thompson*, 16 Wash. (2d) 78, 132 P. (2d) 734 (1943); In *Galigher v. Galigher*, 49 Ore. 155, 89 Pac. 146 (1907) the Supreme Court of Oregon said, "The commission of petty thefts by a husband and caching the fruits of his theft in and about his dwelling is certainly a personal indignity to a wife of honesty and refined feelings". *Sullivan v. Sullivan*, 52 Wash. 160, 100 Pac. 321 (1909).
25. *Capps v. Capps*, 65 S.W. (2d) 661, 663 (Mo. App. 1933); *Bowers v. Bowers*, 98 Ore. 548, 194 Pac. 697, 698 (1921); *De Lisi v. De Lisi*, 139 Pa. Super 440, 12 A. (2d) 468 (1940).
26. *Schultz v. Schultz*, 46 Wyo. 121, 23 P. (2d) 351 (1933); *Press v. Press*, 188 Ark. 854, 67 S.W. (2d) 1013, 1017 (1934).
27. *Trigg v. Trigg*, 226 Mo. App. 284, 41 S.W. (2d) 583 (1931); *Kamp v. Kamp*, 36 Wyo. 310, 254 Pac. 689 (1927); *Galigher v. Galigher*, 49 Ore. 155, 89 Pac. 146 (1907).
28. There is a difference of opinion among the courts as to the requirement that the complaining party must be innocent and injured. In Pennsylvania, if the action is for absolute divorce the complaining spouse is required (Pa. Stat. 1936 sec. 23-10) to be "innocent and injured". The Supreme Court of that state has taken a realistic view of this matter and does not deny a divorce merely because some fault on the part of the petitioner is shown. See *Di Stefano v. Stefano*, 152 Pa. Super. 115, 31 A. (2d) 357 (1943); *Stevens v. Stevens*, 158 S.W. (2d) 238 (Mo. App. 1942). The Supreme Court of Arkansas has taken a different view in that when both parties are to blame relief will not be granted because it is as true of divorce cases as of any others that a party must come into a court of equity with clean hands and divorce laws are made to give relief to the innocent and not to the guilty. See *Meffert v. Meffert*, 118 Ark. 582, 177 S.W. 1 (1915). In Wyoming both parties may be at fault as the "re-termination" statute (Wyo. Comp. Stat. 1945 sec. 3-5908) provides that the complaining party shall not be guilty of the same crime or misconduct charged against the defendant. See *Kamp v. Kamp*, 36 Wyo. 310, 254 Pac. 689 (1927).