

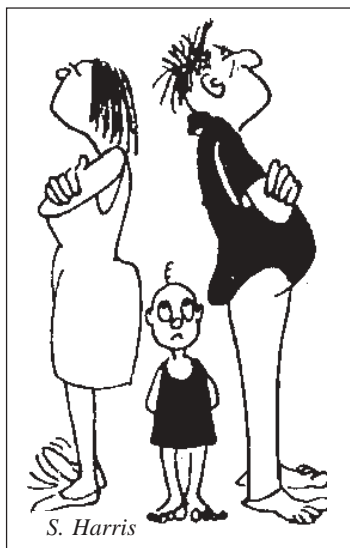
Divorce

The grounds for divorce

In Guyana divorce is still based upon the court being satisfied that one of the parties to the marriage is at fault. Divorce by consent is not allowed.

The three main grounds for divorce are

1. Adultery
2. Cruelty
3. Malicious desertion, i.e. when one party has left the matrimonial home without either a good reason or the consent of the other party, or has treated the other party so badly that she/he has been forced to leave. This is the ground most often used.



The Petition

The party who wants the divorce (the **petitioner**) files a petition in the High Court asking for a decree of divorce against the other party (the **respondent**) and setting out the ground on which the petition is based.

Service

The petition must be served upon the respondent. There are two types of service:

Personal Service. The petition is served by a marshal of the Supreme Court or an authorised lawyer's clerk. The respondent must be pointed out to the marshal or clerk by the petitioner or someone else who knows the respondent.

Substituted Service. By either registered airmail post when

the respondent lives abroad and the petitioner has her/his address, or advertisement in a newspaper in Guyana or the country where the respondent lives when the petitioner does not have her/his address.

Defended Divorce

A divorce is defended when the respondent enters an **appearance** and files an **answer** or answer and cross prayer. The respondent may not only ask that the petition be dismissed but that she/he be granted a divorce instead.

A defended divorce takes much longer to come up for hearing than an undefended divorce and costs more in lawyer's fees.

Undefended Divorce

If the respondent does not enter an appearance or file an answer the petition will be put on the undefended list for hearing.

The Hearing

If the petition is **undefended** the petitioner goes into the witness box and testifies as to the contents of the petition. If the judge finds that the grounds on which the petition is based have been proved she/he will grant a **Decree Nisi** of divorce.

If the petitioner is abroad and cannot return to Guyana for the hearing a special application can be made for her/his evidence to be given by affidavit (a sworn statement in writing).

If the petition is **defended** each party gives evidence and is cross-examined by the lawyer for the other party. The same applies to any witness each party has. The judge decides which party has proved her/his case and either grants a decree nisi or dismisses the petition.

A certified copy of the marriage certificate must be handed in at the hearing as proof that the parties were legally married.

A DECREE NISI DOES NOT END THE MARRIAGE. THIS ONLY HAPPENS WHEN THE DECREE NISI HAS BEEN MADE ABSOLUTE.

Decree Absolute

Six weeks after the decree nisi has been made the petitioner can apply to have it made absolute. If the petitioner does not apply the respondent can do so nine weeks after the decree nisi.

The Attorney-General or other interested party can intervene to stop the decree nisi being made absolute on the ground that the nisi was improperly obtained, but this very rarely happens.

Maintenance and Custody

Orders for maintenance of a wife and for maintenance and custody of children can be applied for at any time before decree absolute. It is better to have arrangements as to maintenance and custody finalised and made part of the order nisi.

Judicial Separation

A decree of judicial separation can be obtained on basically the same grounds as a decree of divorce. It frees the party obtaining it from the obligation to live with the other party.

It is usually applied for by people who have a religious objection to divorce.

A DECREE OF JUDICIAL SEPARATION DOES NOT END THE MARRIAGE, SO NEITHER PARTY CAN REMARRY.

Nullity

When a marriage is **VOID** or **VOIDABLE** the party not at fault can apply for a decree of nullity.

A **void** marriage has no legal effect at all and a decree of nullity simply confirms this. A marriage will be void if:

- (1) Either party is under 16 years old; or
- (2) One of the parties is already legally married to someone else.

A **voidable** marriage is valid unless and until a decree of nullity is made.

For more examples of void and voidable marriages see Section Number 4 on Getting Married.