A COMPARATIVE SURVEY OF “DIVORCE LAWS” IN VARIOUS CIVIL LAW JURISDICTIONS

Louisiana

Art. 102. Judgment of divorce; living apart one hundred eighty days prior to rule

Except in the case of a covenant marriage, a divorce shall be granted upon motion of a spouse when either spouse has filed a petition for divorce and upon proof that one hundred eighty days have elapsed from the service of the petition, or from the execution of written waiver of the service, and that the spouses have lived separate and apart continuously for at least one hundred eighty days prior to the filing of the rule to show cause.

The motion shall be a rule to show cause filed after all such delays have elapsed.

Art. 103. Judgment of divorce; other

The Netherlands

Art. 150. Divorce between spouses who are not separated in fact is pronounced upon the demand of one of the spouses or upon their joint request.

Art. 151. Divorce is pronounced upon the demand of one of the spouses if the marriage is permanently disintegrated.

Art. 152. The demand is rejected if the permanent disintegration is, to a preponderant extent, imputable to the spouse who has made the demand and the other spouses opposes the demand on this basis.

Art. 154. 1. Divorce is

Belgium

Art. 229. Each spouse can demand divorce for the adultery of his co-spouse.

Art. 231. The spouses can reciprocally demand divorce for excesses, cruel treatment, and grievous injuries of one of them toward the other.

Art. 232. Each of the spouses can demand divorce on account of separation in fact for more than two years, if it results from this situation that the disunion of the spouses is irretrievable and permitting divorce on this basis does not in a notable manner aggravate the material situation of the minor children who have issued from the marriage of the spouses or have lived separate for a continuous period of at least one hundred eighty days prior to the filing of the rule to show cause.

Luxembourg

Art. 229. Divorce can be demanded for the cause of excesses, cruel treatment, or grievous injuries of one of the spouses toward the other, when what is done constitutes a grave or persistent violation of the duties and obligations that result from marriage and renders intolerable the maintenance of the common life.

Art. 230. Each of the spouses can demand divorce in a case of continuous and effective separation in fact that has endured at least three years, if it results from this situation that the disunion of the spouses is irretrievable.

Art. 231. Divorce can be demanded jointly by the spouses when they agree with each other on the rupture of the marriage and its effects, by submitting for the judge’s approval a contract that governs the consequences of the divorce.

Art. 232. The judge shall homologate the contract and shall pronounce the divorce if he acquires the conviction that the marriage is failed when the spouses have lived separate after the expiration of eighty days prior to the rule.

France

Art. 229. Divorce can be pronounced in a case of mutual consent; of acknowledgment of the reality [acceptation du principe] of the rupture of the marriage; of definitive alteration of the conjugal bond; or of fault.

Art. 230. Divorce can be demanded jointly by the spouses when they agree with each other on the rupture of the marriage and its effects, by submitting for the judge’s approval a contract that governs the consequences of the divorce.

Art. 232. The judge shall homologate the contract and shall pronounce the divorce if he acquires the conviction that the marriage is failed when the spouses have lived separate after the expiration of eighty days prior to the rule.

Germany

§ 1565. (1) A marriage can be dissolved when it is failed. The marriage is failed when the common life of the spouses no longer exists and it cannot be expected that the spouses will be restored.

(2) If the spouses have not yet lived separate for a year, then the marriage can only be dissolved when the continuation of the marriage for the one who asserted the cause for divorce, which cause lies in the person of [i.e., is attributable to] the other spouse, would represent an unreasonable hardship.

Switzerland

Art. 111. Divorce on joint request; complete accord

1° When the spouses demand divorce by a joint request and produce a completed contract regarding the effects of their divorce, accompanied by the necessary documents and their common decisions with respect to the children, the judge shall hear them separately and together; he will assure himself that it is after mature reflection and according to their free will that they have filed their request and concluded the contract and that the contract is susceptible of being ratified.

2° The judge shall pronounce the divorce and ratify the contract when, after the expiration of one hundred eighty days, the spouses petition for divorce, and the judge shall pronounce the divorce and ratify the contract when, after the expiration of one hundred eighty days, the spouses petition for divorce.

Argentina

Art. 214. The following are causes of divorce from the bonds of marriage:

1° Those established in Article 202.

2° The separation in fact of the spouses without the will to reunite themselves for a continuous period of more than three years, within the scope and in the form for which Article 204 provides.

Brazil

Art. 1580. After a year has passed from the finality of the judgment that had decreed a judicial separation or a consent decree ordering the precautionary measure of bodily separation, either of the parties can petition for its conversion into divorce.

§ 1° The conversion into divorce of a judicial separation of the spouses will be decreed by judgment, which will not take note of the cause that determined the separation.

§ 2° Divorce can be petitioned for, by one or by both of the spouses, in the case of a proven separation in fact for more than two years.

[Art. 202. The following are causes of personal separation:

1° Adultery.

2° An attempt by one spouse against the life of the other or of [one of] the children, be the children common or not, whether the spouse acts as principal, as accomplice, or as]
grounds. Except in the case of a covenant marriage, a divorce shall be granted on the petition of a spouse upon proof that:

(1) The spouses have been living separate and apart continuously for a period of six months or more on the date the petition is filed;
(2) The other spouse has committed adultery; or
(3) The other spouse has been living separate and apart continuously for a period of six months or more on the date the petition is filed.

Divorce can be demanded by one of the spouses in a case of separation in fact for more than five years if the separation is due to some apparently incurable mental alienation in which the other spouse finds himself and if it results from this situation that the disunion of the spouses is irremediable.

Art. 232-1. The causes of divorce addressed in Articles 230 and 231 of the Civil Code can be invoked only by the party who has a principal demand. To the principal demand a reconvensional demand can be opposed, but only for a divorce [as opposed to a separation] founded on Article 229. If such a reconvensional demand is granted, its effect will have the effect of a rejection of the will of each of the spouses in real and their consent is free and informed. He can refuse homologation and not pronounce the divorce if he finds that the contract fails to preserve sufficiently the interests of the children or of one of the spouses.

Art. 233. Divorce can be demanded by one or the other of the spouses or by both of them when they make a demand of separation not without consideration of the facts from which this rupture originated. This acknowledgment is not susceptible of retraction, not even by way of appeal.

Art. 234. If the joint request and the conviction that each of the spouses has for a delay of reflection of two months reckoning from the hearing, the spouses confirm in writing their will to divorce and the terms of their contract. The court can order another hearing.

§ 1568. (1) The marriage shall not be dissolved, even though it is failed, [1] when and so long as the maintenance of the marriage is, for some particular reasons and by way of exception, necessary or [ii] when and so long as the dissolution would represent for the opponent who rejects dissolution, by reason of some extraordinary circumstance, a harm which renders dissolution insupportable.

Art. 112. Divorce on joint request; partial accord. The spouses can demand divorce by joint request and can declare that they confide to the judge the task of governing those effects of their divorce on which disagreement subsists.

Art. 204. Personal separation. Either of the spouses can propose an action for judicial separation, by imputing to the other some act that entails a grave violation of the duties of marriage and renders common life insupportable. § 1° Judicial separation can also be requested if one of the spouses proves a rupture of the common life that has endured for more than a year and the impossibility of reconstituting it.

§ 2° A spouse can demand from the other judicial separation if the other has suffered an attack of a grave mental illness, manifested after the marriage, that renders impossible the continuation of the common life, from the moment that, after a duration of two years, it has been recognized that a cure for the infirmity is...
proves that the legislation establishes, will sufficiently prove that their common life is insupportable and that there exists, in relation to them a peremptory cause of divorce.

Art. 275.
The mutual consent of the spouses [to a divorce] will not be granted unless one of them is at least twenty years old at the moment of the filing of the request [for divorce] addressed in Article 1288bis of the Judiciary Code.

Art. 276.
Mutual consent [to a divorce] will be granted only when the marriage was concluded at least two years prior to the filing of the request [for divorce] addressed in Article 1288bis of the Judiciary Code.

principal demand, and the divorce will be pronounced for the wrongs of the plaintiff spouse.

freely given his assent, the judge shall pronounce the divorce and rule on its consequences.

Art. 237.
Divorce can be demanded by one of the spouses when the conjugal bond has been definitively altered.

Art. 238.
Definitive alteration of the conjugal bond results from the cessation of the community of life between the spouses, when they have been living separate and apart for two years as of the time of the assignment in divorce.

Notwithstanding these dispositions, divorce shall be pronounced for definitive alteration of the conjugal bond in the case for which the second line of article 246 provides, from the moment at which the claim for divorce on this basis marriage, even after consideration of the interests of the proponent, appears by way of exception to be dictated.

(2) [abrogated]

§ 1°. The judge can consider other facts that clearly produce an impossibility of common life.

Art. 1574.
To be entitled to a judicial separation by mutual consent, the spouses must have been married for more than a year and must manifest
is set up in a reconventional demand.

Art. 242.
Divorce can be demanded by one of the spouses when acts that constitute a grave or persistent violation of the duties and obligations of marriage are imputable to the other spouse and render intolerable the maintenance of common life.

Art. 244.
Reconciliation of the spouses intervening after the facts alleged prevents their being invoked as cause for divorce.

The judge shall then declare the demand not receivable. A new demand may, however, be brought by reason of facts occurring or discovered since the reconciliation, the former facts being then able to be

the spouse have lived separated for at least two years.

Art. 1151. Divorce on unilateral demand; rupture of the conjugal bond
One spouse can demand divorce before the expiration of the delay of two years, when serious reasons that are not imputable to him render the continuation of the marriage insupportable.

Art. 116. Consent to the divorce; reconventional demand
The disposition relative to divorce on common request are applicable by analogy when one spouse demands divorce after suspension of the common life or for rupture of the conjugal bond and the other expressly consents to the divorce or asserts a reconventional demand.

this consent before the judge, who must properly homologate the contract [of dissolution].

§ 1° The judge can reject homologation and not decree a judicial separation if he discovers that the contract does not sufficiently preserve the interests of the children or of one of the spouses.
recalled in support of such new demand.

Temporary maintenance or resumption of common life is not considered to be a reconciliation if it results only from necessity or from an effort at reconciliation or from the needs of the education of the children.

Art. 245.

Faults of the spouse who took the initiative in the divorce do not prevent investigation of his or her demand; they may, however, take away from the facts for which the other spouse is reproached the character of gravity that would make them a cause for divorce.

Such faults may also be invoked by the other spouse in support of a reconventional demand in divorce. If the two demands
are granted, the divorce is pronounced for mutual fault. Even in the absence of a reconventional demand, divorce may be pronounced for mutual fault of the two spouses if the evidence reveals wrongs on the part of both.

Art. 245-1.
In a case of divorce for fault, and on the demand of the spouses, the judge of family affairs can limit himself to noting in his reasons for judgment that facts constituting a cause for divorce exist, without having to spell out the wrongs and grievances of the parties.

Art. 246.
If a demand for definitive alteration of the conjugal bond and a demand for fault are presented concurrently, the judge shall examine
the demand for fault first. If he rejects the demand for fault, the judge shall rule on the demand in divorce for definitive alteration of the conjugal bond.

Art. 247.

The spouses can, at any moment of the proceedings, demand that the judge take note of their agreement to pursue the pronouncement of their divorce by mutual consent, by presenting to him a contract that governs the consequences of this divorce.

Art. 247-1.

When divorce has been demanded for definitive alteration of the conjugal bond or for fault, the spouses can likewise, at any moment of the proceedings, demand that the judge take note of their agreement to
pursue the pronouncement of the divorce for acceptance of the principle of the rupture of the marriage.

Art. 247-2.
If, within the framework of an action for divorce for definitive alteration of the conjugal bond, the defendant makes a reconventional demand for divorce for fault, the plaintiff can invoke the fault of his spouse in order to modify the basis for his own demand.

1. The phrase I’ve rendered here as “permanently disintegrated” – duurzaam ontwricht – is notoriously difficult to translate. At least some Dutch family law scholars, when writing in English, translate the phrase as “irretrievably broken down,” but this is a loose translation indeed. The French, in their translations of the Dutch Civil Code, typically render it as désuni de manière durable, which, literally translated, means “disunited in an enduring fashion.” Other plausible renderings include the following: for duurzaam, “continuously,” “persistently,” “in an ongoing fashion,” “irreversibly”; for ontwricht, “disjointed,” “disconnected,” “divided,” “set at odds.”