

October 2016

A Manual on Marital Reconciliations

James D. Ghiardi

Follow this and additional works at: <https://scholarship.law.stjohns.edu/tcl>

Recommended Citation

James D. Ghiardi (1964) "A Manual on Marital Reconciliations," *The Catholic Lawyer*. Vol. 10 : No. 4 , Article 11.

Available at: <https://scholarship.law.stjohns.edu/tcl/vol10/iss4/11>

This Book Review is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in The Catholic Lawyer by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

BOOK REVIEWS

A MANUAL ON MARITAL RECONCILIATIONS

by *Nester C. Kohut*

Adams Press, Chicago, Illinois, 1964. Pp. 100. \$1.45.

Reviewed by

JAMES D. GHIARDI*

The author presents at the outset his challenging hypothesis that a substantial number of marriages alleged by the parties and supposed by the attorneys and divorce courts to be irreparable are not in fact completely and irreversibly broken. He then proceeds to outline objective criteria to determine at what point the marriage has reached the "total breakdown" stage. Legal grounds for divorce do not provide the answer—in fact, they beg the very question. For example, where cruelty is a ground for divorce, one must ask of what degree and nature does such cruelty have to be?

After a detailed analysis of the views of legal writers, teachers, judges, clerics and sociologists, the author arrives at these five objective criteria:

- (1) Is any relationship or bond sufficiently viable, or any function still being performed adequately, so as to maintain the marriage at a workable level?
- (2) Does the nature of the difficulty extend to the roots of the marriage?
- (3) If professional conciliation is attempted and given a fair try, might it offer an opportunity for reconstruction of the marriage?
- (4) Has society, through its agencies and

institutions, done all it can to assist the distressed couple?

- (5) Is there a suitable alternative to divorce?

Before the author applies these criteria to specific situations, he discusses generally what constitutes stability in marriage and the adjustments necessary to achieve such stability, concluding that conflict is inevitable for persons entering marriage and that conjugal growth is essential for marriage stability.

Mr. Kohut then analyzes four grounds for divorce and their relationship to his "total breakdown" premise. Adultery is not discussed because of its limited use as a ground for divorce. The author ignores the practical fact that adulterous behavior is often present in cases where divorce is sought on the grounds of desertion, cruelty or incompatibility. In the discussion of these grounds for divorce, numerous questions are raised but no solutions are offered since human nature precludes any total solution to the problems of desertion, cruelty, incompatibility or drunkenness as factors in marriage instability.

Separation agreements and voluntary separations executed by attorneys are decried because "the determination of the viability of a separating couple's marriage in the final analysis rests upon the at-

* Ph.B., LL.B., Marquette University; Professor of Law, Marquette University Law School.

torney." The attorney's ability to take on such a socio-psychological role is seriously questioned. The ordinary legal training of a lawyer apparently does not qualify him for such a role, but this reviewer doubts whether it is the attorney who makes the final determination (except to the extent that an attorney who does not believe that the parties are unable to live together may refuse to take the case).

The role of the lawyer in the rehabilitation of broken marriages is discussed and the author asks for a change in the attitude of the legal profession towards marriage counseling. Lawyers could readily dispute the thesis that they are also marriage counselors and still readily agree with the premise that, in collaboration with other agencies, groups and professions, they have the vital role of attempting to reconcile married couples. A call for specialization in the field of domestic relations law on the part of attorneys is sounded, and although the need for specialization is stated as a fact, the problems involved in such training, *e.g.*, the ability of parties to pay lawyers for non-legal work, the responsibility for training such specialists, and the desire of society for such training, are merely hinted at by the author.

The book concludes with the following proposals which, if adopted, should result in a more therapeutic family law:

- (1) divorces should not be obtainable until the parties have been married for five years;
- (2) the family court concept must be further developed and expanded;
- (3) barriers should be erected to limit the vast number of migratory divorces;
- (4) interlocutory decrees should be granted before final divorce is available; and

- (5) some uniformity must be developed in divorce laws.

The author merely suggests that better preparation for marriage can be a deterrent to divorce, and he never fully explains how uniformity of state laws will lead to fewer divorces, except that it may tend to reduce migratory actions.

Mr. Kohut states in his introduction that a "team" approach in matters of divorce and separation is needed in the form of inter-disciplinary cooperation. The book makes this point by emphasizing that lawyers and the courts have not contributed as much as they should to this "team" effort. To this extent the manual is not one on marital reconciliation, but a criticism of the legal process. This reviewer must question the author's premise since much of his criticism is directed to the laws as enacted by the legislature, and this deficiency cannot be cured by a lawyer or a judge who is carrying out his appointed function. The second purpose of the manual, to serve as a source book for further, broader treatments of domestic relations law, is successfully accomplished. However, the answers to the many questions raised will require much more research, analysis and synthesis than is found in the one hundred pages of this manual. Unfortunately, the manual does not go beyond this role as a source book; its criticisms of the legal profession, the courts, the training of lawyers and the legal process are mere conclusions of the author and are not substantiated by detailed statistics, painstaking research or logical discussion. Although much worthwhile material is contained in the manual, its use of objective criteria to analyze a highly subjective area is unsatisfactory from a legal viewpoint.