

Marital Privilege - Outline & Chart

Anti-Marital Facts Privilege

Also known as: Spousal Incompetency, Spousal Disqualification, or Testimonial Privilege.

Rule: Prohibits one spouse from testifying against the other without the other's consent.

Purpose: Preserve the harmony of the marital relation.

History: What remains of the old-common law rule that a spouse was incompetent as a witness for or against the other spouse based on the legal fiction that husband and wife were one person. The rule protects the harmony of the marriage, reflecting the age-old repugnance for the idea of convicting a man or woman by his or her spouse's testimony.

Exceptions: Once divorced a spouse may testify against his or her spouse. Doesn't apply where the spouse or his or her children are the victims of a crime carried out by the other spouse. Doesn't apply where a marriage was entered into for fraudulent purposes.

Note: Although a statute provides that husbands and wives are "incompetent" witnesses as to communications made to each other, the use of the word "incompetent" is technically incorrect, where case law makes clear that the statute creates a privilege as to confidential communications, not an absolute incompetency.

Marital Communications Privilege

Also known as: Confidential Communications Privilege, or Marital Privilege.

Rule: Applies to confidential communications made within a marital relationship.

Purpose: To protect confidences only and thereby encourage communications free from fear of compulsory disclosure promoting marital harmony.

History: Narrowly protects the privacy of the marriage, that is, the rights of the individual partners to the marriage rather than the institution of marriage itself.

Exceptions: Applies only to communications that were confidential and occurred during the marriage. Does not apply to communications not intended to be private or which the speaker intended to be conveyed to a third party. Extends only to utterances, not acts. The privilege may be waived. Communications relating to present or future crimes are not privileged.

Note: A statute which provides that neither spouse may be examined as a witness for or against the other without his or her consent (except in cases of prosecution for a crime committed against the child of either or both), nor may either during the marriage or afterwards without the consent of both be examined as to any communication made by one to the other during the marriage, codifies this rule.

Marital Privilege Chart

	Marital Communications Privilege	Anti-Marital Facts Privilege
Rule	<p>Applies to confidential communications made within a marital relationship.</p> <ul style="list-style-type: none"> - Applies only to communications that were confidential and occurred during the marriage. 	<p>Prohibits one spouse from testifying against the other without the other's consent.</p>
Exceptions	<ul style="list-style-type: none"> - Doesn't apply where a marriage was entered into fraudulently. - Doesn't apply to communications not intended to be private or which the speaker intended to be conveyed to a third party. - Doesn't apply to communications relating to present or future crimes. - Extends only to utterances, not acts. - The privilege may be waived. 	<ul style="list-style-type: none"> - Once divorced, a spouse may testify against his or her spouse. - Doesn't apply where the spouse or his or her children are the victims of a crime carried out by the other spouse. - Doesn't apply where a marriage was entered into fraudulently.
Purpose	<p>To protect confidences only and thereby encourage communications free from fear of compulsory disclosure promoting marital harmony.</p>	<p>Preserve the harmony of the marital relationship</p>
History	<p>Narrowly protects the rights of the individual partners to the marriage rather than the institution of marriage itself.</p>	<p>What remains of the common law rule that a spouse was incompetent as a witness for or against the other spouse based on the legal fiction that husband and wife were one person.</p>
Also known As	<p>Confidential Communications Privilege, or Marital Privilege.</p>	<p>Spousal Incompetency, Spousal Disqualification, or Testimonial Privilege.</p>