

The Annulment Process

ISSUE: What is a declaration of nullity?

RESPONSE: A declaration of nullity is not a divorce. A divorce recognizes a marriage existed but allows common life to end. A declaration of nullity is a decree by a Church court stating that a marriage never existed. In a case of marriage nullity, the judges must determine if the minimum requirements of marriage were met, not if the ideal marriage was achieved. If minimum requirements were met, the validity of the marriage is upheld.

DISCUSSION: Many people explain marriage nullity as being a statement by the Church that a particular marriage was not a sacrament. This is entirely false. This explanation has no basis in Church teaching. If a marriage occurs, it is either a sacramental marriage or a natural marriage. Both are marriages. Both are recognized as valid and protected by the Church as holy unions. To be considered invalid, both require the same process. The fact that a marriage lacks sacramental dignity does not constitute grounds for invalidity.¹

To understand a declaration of nullity, we must know the general reasons for a declaration of nullity, the roles of the people involved, and the basic procedures used.

GROUND OF MARRIAGE NULLITY

Consent makes marriage. As stated in canon law:

Marriage is brought about through the consent of the parties, legitimately manifested between persons who are capable according to law of giving consent; no human power can replace this consent.²

This means that to prove a marriage never existed requires proof that consent was never legitimately exchanged. Once consent is validly exchanged, a marriage occurs. If one of the spouses breaks the marriage vows, this does not “nullify” the marriage. Such acts are grave matter and morally wrong, but do not make a valid marriage invalid.

Another way of explaining marriage consent is by analogy to the sacraments. Every sacrament must have proper form and matter to be valid. For the sacrament of Eucharist, the proper form is the words of consecration spoken by a priest. The proper matter is wheat bread and grape wine. When the words of consecration are prayed, the bread and wine become the Body and Blood of Jesus. If someone takes the Sacred Host and breaks it into pieces, it remains the Body of Christ. Furthermore, if the priest later decides he doesn’t believe in the True Presence, his lack of faith does not remove the True Presence from those Sacred Species in the tabernacle. In the same way, marriage has proper form and matter. The form is the words and rituals used to exchange consent. The proper matter for marriage is the man and woman capable of giving consent. Once the marriage vows are legitimately exchanged, the marriage remains, even if the vows are broken or the spouses believe the marriage is dead.

To prove consent was never legitimately exchanged, one of three things must be established: 1) the proper form of marriage was not used, 2) one or both of the parties were incapable of exchanging consent, or 3) consent itself was not exchanged.

Form of Marriage

The form of marriage refers to the wedding ceremony; the ritual used to exchange consent. Catholics must follow the Catholic form of marriage. Even if only one of the parties is Catholic, the Catholic form must be followed.³

For Catholics belonging to the Western, Latin Rite Church, the form requires that consent be exchanged in the presence of a cleric, in accordance with the approved liturgical rite, and witnessed by two other people.⁴ The cleric

assisting at the wedding must have the proper authority to witness the marriage in the name of the Church. In certain circumstances, when a genuine shortage of priests and deacons exists, members of the lay faithful can receive delegation from the diocesan bishop to assist at marriages.⁵

In the Eastern Catholic Churches, the required form is a bit different. “Only those marriages are valid which are celebrated with a sacred rite, in the presence of the local hierarch, local pastor, or a priest who has been given the faculty of blessing the marriage by either of them, and at least two witnesses.”⁶

The “sacred rite” means a priest must assist and give a blessing.⁷ Contrary to the discipline of the Western Catholic Church, the nuptial blessing is required for validity in the Eastern Catholic Churches. A deacon cannot assist at a marriage because he cannot give the nuptial blessing. If an Eastern Rite Catholic contracts marriage with a member of an Eastern Orthodox Church according to the laws of the Orthodox Church, but without the permission of the Catholic hierarch, the marriage is valid if the nuptial blessing was given by a priest.⁸

In certain circumstances, the local ordinary or hierarch can dispense from the required form of marriage. However, if a Catholic attempts marriage and neglects the proper form of marriage, the marriage is invalid.

Diriment Impediments

A diriment impediment is a situation or condition that makes a person incapable of entering marriage.⁹ If a diriment impediment exists and consent is exchanged, no marriage is contracted.

Before a priest witnesses a marriage, he is obligated to investigate the couple’s situation and make certain no impediments exist.¹⁰ This is usually done through a pre-nuptial questionnaire and a review of legal documents (e.g., birth and baptismal certificates).

Some impediments are established by ecclesiastical law. They refer only to Catholics and are disciplines imposed for the right order of the sacraments and married life. In certain circumstances, they can be dispensed. Other impediments are established by divine law and cannot be dispensed. Divine law impediments apply to Catholics and non Catholics alike.

Examples of diriment impediments that can be dispensed include: Marriage with a non baptized person, consanguinity in the collateral line (marriage with a cousin), and legal relationship arising from adoption. Examples of diriment impediments that cannot be dispensed include: Antecedent and perpetual impotence, bond of a previous marriage, and affinity in the direct line (marriage with a parent or grandparent).¹¹

Marriage Consent

If the form of marriage is properly observed and no impediments exist, each of the parties in a marriage must still give free consent. If one or both do not give consent, a marriage never occurs. In general, there are three categories of defective consent: 1) Defects of knowledge, 2) conditioned consent, and 3) defects of will.¹² Several, more specific grounds are found in each category.

Generally speaking, defects of knowledge refer to situations in which one or both people do not have the necessary knowledge to choose marriage in their specific situation. For example, canon 1097§1 reads: “Error of the person renders marriage invalid.” This means if Jacob intends to marry Rachel, but her sister, Leah, wears a bridal veil and he mistakenly marries her instead, the marriage is invalid.¹³

Conditioned consent refers to a person qualifying his consent or placing conditions that violate the minimum requirements of marriage. A person not intending to have children is an example of conditioned consent. Children are a gift from God and, by divine law, all marriages must remain open to children. Specifically excluding children at the time of consent invalidates the consent.¹⁴

A defect of will occurs when a person marries against his will. Force and grave fear are examples of grounds in this category.¹⁵

The judges hearing the case determine what the ground of nullity will be. They establish the grounds after reviewing the information given them by the petitioner and the responses offered by the respondent. Most important to remember, if the minimum requirements to enter marriage are met, the marriage occurs and no declaration of nullity should be given.

PEOPLE INVOLVED

There are three principle parties, or people, involved in the process investigating marriage nullity. A petitioner is the person who files for the declaration of nullity. A respondent is the other spouse in the marriage under review. The defender of the bond is a person appointed by the court to defend the marriage bond. He “is bound by office to propose and clarify everything which can be reasonably adduced against nullity or dissolution.”¹⁶

There are others also involved in the matter. A judge is the person appointed to determine whether the marriage is invalid. Cases concerning marriage nullity generally require a court of three judges.¹⁷ In certain circumstances, it is permissible for a bishop to allow a single judge to hear a case of marriage nullity. If only one judge is appointed on a marriage case, he must be a priest or deacon.¹⁸ An auditor is a person appointed to assist the judge in gathering facts.¹⁹

A procurator is a person who acts in the name of one of the parties. An advocate is a person who defends the position of one of the parties. In most cases, a person using the services of a procurator or advocate must give permission for them to act. This permission is called a mandate.²⁰

PROCEDURES

There are four stages of the process itself. In the first stage, the petitioner requests the court to investigate the marriage and the case is accepted or rejected. Once accepted, the respondent becomes directly involved. In the second stage, the judge gathers the proofs. In the third stage, the proofs are revealed to all the parties involved. All have a right to know what information is being used to make a decision. If this right to know is denied, the procedural acts can be declared invalid and the process has to begin again. In the final stage, a decision is made and the parties are given opportunity to appeal. Even if no appeal is made, a higher court must review an affirmative decision and issue agreement before the parties are free to marry.²¹

While the petitioner must begin the process, the respondent and the defender of the bond have the same rights during the process. If the court acts properly, four natural rights are recognized and protected: the right to defense, the right to know the grounds, the right to know the judgment, and the right to appeal. Specific violations of these rights gives cause for an appeal and may give reason to declare the process invalid. Because of the technicalities in the procedures, it is always helpful for the parties to acquire an advocate to help explain the process and protect rights.

In closing, we must remember that no one has a right to receive a declaration of nullity. Nor is the process an opportunity “to get even” for problems that occurred during common life. The Church is concerned for the truth about the marriage. If the procedures are followed properly, there is better chance the truth will be made known. When made known, regardless of the decision, “the truth will set you free” (Jn. 8:32).

¹ A marriage is a sacrament if the husband and wife are baptized. It does not matter what religion they belong to. If one or both parties are not baptized, the marriage is not a sacrament but is called a natural marriage (*CIC*, c. 1055§2; *CCEO*, c. 776§2).

² *Code of Canon Law (CIC)*, c. 1057§1; *Code of Canons of the Eastern Churches (CCEO)*, c. 817.

³ *CIC*, c. 1117; *CCEO*, c. 834§1.

⁴ *CIC*, c. 1108, 1119.

⁵ *CIC*, c. 1112.

⁶ *CCEO*, c. 828§1.

⁷ *CCEO*, c. 828§2.

⁸ *CCEO*, c. 834§2.

⁹ *CIC*, c.1073; *CCEO*, c. 790.

¹⁰ *CIC*, c. 1066; *CCEO*, c. 785.

¹¹ For reference to these and the other diriment impediments, see *CIC*, cc. 1073-1094, *CCEO*, cc. 790-812.

¹² Specific grounds of nullity effecting marriage consent can be found in *CIC*, cc. 1095-1107, *CCEO*, cc. 817-827.

¹³ The grounds of nullity referring to defects of knowledge can be found in *CIC*, cc. 1095-1100, *CCEO*, cc. 818-823.

¹⁴ The grounds of nullity referring to conditioned consent can be found in *CIC*, cc. 1101-1102, *CCEO*, cc. 824, 826.

¹⁵ The grounds of nullity referring to defects of will can be found in *CIC*, cc. 1103, 1105§4, 1106, *CCEO*, cc. 825.

¹⁶ *CIC*, c. 1432; *CCEO*, c. 1096.

¹⁷ *CIC*, c. 1425§1,2; *CCEO*, c. 1084§1,2.

¹⁸ *CIC*, c. 1425§4; *CCEO*, c. 1084§3.

¹⁹ *CIC*, c. 1428.

²⁰ *CIC*, c. 1484; *CCEO*, c. 1142.

²¹ Specific procedural norms are found in *CIC*, Book VII and *CCEO*, Titles XXIV-XXVI.

AVAILABLE FROM CUF BOOKS AND TAPES BY MAIL:

Catechism of the Catholic Church; \$19.95 • CUF Member . . . \$12.00 (Paperback)

Catechism of the Catholic Church; \$29.95 • CUF Member . . . \$22.00 (Hardcover)

To order, call Benedictus Books toll-free: 1-888-316-2640.

Hahn, Scott, et al., *Catholic For A Reason*; \$15.95 • CUF Member . . . \$14.35

To order, call Emmaus Road Publishing toll-free: 1-800-398-5470.

FAITH FACTS AVAILABLE FREE: 1-800-693-2484

What Makes a Marriage: Consummation and the Special Case of the Holy Family • Same Sex Marriages • No Bull: Papal Authority and Our Response • The Necessity of Law and Right Order

**Catholics United for the Faith
827 North Fourth St.
Steubenville, OH 43952
(800) 693-2484**

© 1998 Catholics United for the Faith, Inc.

Last edited: 9/30/98