



The Roman Catholic Archdiocese of Washington

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MARRIAGE ANNULMENTS — QUESTIONS AND ANSWERS

1. *What is marriage?*

Marriage is the matrimonial covenant, established by God, by which a man and a woman enter into a partnership of the whole of life.

Since they are created in the image and likeness of God in such a way that “the two become one flesh,” the vocation to marriage is written in their very nature by the hand of their Creator. It is ordered by its nature to the good of the spouses and the procreation and education of children; therefore, the essential properties of marriage are unity and indissolubility.

It is through their own personal consent that a man and a woman enter the irrevocable matrimonial covenant, and give and accept each other in order to establish marriage.

The Church’s understanding of marriage as something instituted by God applies to all marriages whatsoever, whether of Catholics or non-Catholics, whether of Christians or non-Christians.

For the baptized, whether Catholics or other Christians, this matrimonial covenant established by God for the whole human race has been raised by Christ the Lord to the dignity of a sacrament. The unity and indissolubility that are the essential properties of any marriage obtain a special firmness for Christians by reason of the sacrament.

2. *What is an “annulment”?*

Though the word “annulment” is used informally, the proper term is “declaration of nullity.” A true “annulment” annuls something, as when a judge in a civil court annuls a civil marriage.

A declaration of nullity is a finding by an

ecclesiastical court (a tribunal) that a relationship that appeared to be a marriage was not in fact a marriage as the Church understands it. It is a finding that there is nothing to “annul.”

Since marriages are presumed to be valid, a finding of nullity must be based on certain grounds, the elements of which must be proved.

3. *Why does the Catholic Church have marriage tribunals?*

The Church is the guardian of the sacraments. As the Bride of Christ, she is vigilant to protect the integrity of holy matrimony. She is faithful to the teachings of Jesus Christ, the Bridegroom, concerning marriage, as stated in Holy Scripture: “Have you not read that from the beginning the Creator ‘made them male and female’ and said, ‘For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh’? So they are no longer two, but one flesh. Therefore, what God has joined together, no human being must separate.”

At the same time, when marriages have broken down and even been the subjects of civil divorce, people have a right to know whether their marriages were valid. Ecclesiastical courts are among the means by which the rights and responsibilities of Catholics are articulated and protected. With a tribunal, the Church can judge the validity of a marriage according to law and jurisprudence, and determine the freedom of the parties to marry.

4. *What are the “grounds” in a case of nullity?*

The grounds for a declaration of nullity are:

(1) the presence of an invalidating impediment before the marriage;

(2) an invalidating defect in, or a total lack of, the canonical form of marriage when it is required, or

(3) an invalidating defect in the consent of one or both of the parties to the marriage.

5. *What are “invalidating impediments” to marriage?*

An impediment is some fact or condition that renders it impossible for a party to contract marriage validly. Some of these impediments are of divine law, and some are of ecclesiastical law.

Impediments of divine law, which affect all human beings, no matter what their religion may be, include: impotence, which is the physical inability to perform the marital act; a prior bond of marriage, when the other spouse still lives; and consanguinity, which is a blood relationship within certain degrees.

Impediments of ecclesiastical law, which affect Catholics and those who wish to marry Catholics, include: lack of minimal age; disparity of cult, which is marriage with an unbaptized person; sacred orders; vows in a religious order; abduction of the woman; crime, which is bringing about the death of a spouse; affinity, which is a relationship through marriage; public propriety, which is a relationship through concubinage; and a relationship through adoption.

In some cases it is possible to obtain a dispensation from an impediment—for example, for a Catholic to marry a non-baptized person—but it must be obtained beforehand. It is not possible, however, to dispense impediments of divine law: impotence, prior bond of marriage, and consanguinity within certain degrees.

In many cases the existence of an impediment can be demonstrated with documentary evidence, so these are called “documentary cases.”

6. *What is the “canonical form” of marriage?*

Catholics are obliged to marry in the presence of their bishop or pastor, or a properly delegated priest or deacon, and two witnesses. This is the “canonical form” and is required for the validity of the marriage.

It is possible to get a dispensation (permission) from one’s bishop to marry in some other way (before a minister, a rabbi, etc.), but without this dispensation, the marriage is invalid.

This law applies even if only one of the parties to the marriage is a Catholic. It does not apply to non-Catholics, who marry in any number of ways, and whose marriages are recognized as valid by the Catholic Church.

As with impediments, a defect or lack of the canonical form can often be demonstrated with documentary evidence, so these, too, are called “documentary cases.”

7. *What are “invalidating defects in the consent” of one or both parties?*

Assuming that there are no impediments, and that the canonical form of marriage (when it is required) is followed, it is the consent of the parties that makes marriage. This consent is an act of the will by which a man and a woman mutually give and accept each other through an irrevocable covenant in order to establish marriage. No earthly power can substitute for the consent of the parties.

For consent to be given validly, especially with regard to such an important matter, it is required that both parties are of sound mind, that they have the necessary discretion of judgment, and are do not labor under some psychological incapacity. Also, the parties must be at least not ignorant that marriage is a permanent partnership between a man and a woman ordered to the procreation of offspring by means of some sexual cooperation.

While a person’s intentions are presumed to conform to the words by which his or her consent is expressed, if a party, while saying the words, in fact positively excludes marriage itself, or some essential element of marriage—the good of the spouses or the procreation and education of children—or some essential property of marriage—unity and indissolubility—the marriage is not valid. Finally, consent can be invalidated by certain kinds of error, by deception, or by force or grave fear.

When the valid consent of one or both parties is in question, the evidence is more difficult to find and to evaluate, and so a “formal process” of citations,

testimony, briefs, and judgment is required. Thus, these are called “formal cases.”

8. *What are the effects of a declaration of nullity?*

A marriage is presumed to be valid until it is proved to be otherwise. The burden of proof lies with the one who alleges its invalidity.

The principal effect of a declaration of nullity is that the marriage in question has no juridical standing and is not recognized by the Church. Generally, the parties are also declared to be free to marry.

In the United States, there are no civil effects of a declaration of nullity, though there may be implications in other countries; nor is the legitimacy of children affected.

9. *Does a declaration of nullity mean that there was no marriage “in the eyes of God”?*

A tribunal does not speak for God; it is better to say that in the judgment of an ecclesiastical court, what appeared to be a marriage was not, in fact, a true marriage established in accordance with God’s plan for marriage.

In reaching their findings, the judges of the tribunal examine the evidence, apply the law of God and of the Church, think, pray, and—“having God only before their eyes”—come to a decision. The judges must reach what is called “moral certitude” to find that a marriage has been proved to be null.

10. *Does such a finding mean that a marriage which has been declared null “never existed”?*

A declaration of nullity is a finding that a valid marriage did not exist, but it does not question whether there was a relationship, or an effort in good faith, or hope for the future, or love between the parties. Nor does it mean that their life together has somehow been erased from history. Indeed, especially if they had children, some relationship will exist between them for the rest of their lives. A declaration of nullity states only that the relationship that the parties had was not, after all, a valid marriage.

Again, it is important to understand that no

marriage is “annulled” by the Church, as though a valid marriage can be made invalid by a tribunal, for no valid marriage can become invalid. What happens is that an apparent marriage is judged to be, and is identified as, invalid from the beginning.

Nevertheless, through human weakness and sin, a valid marriage can be damaged or destroyed, but that does not mean that it was invalid.

11. *What is the process of determining the nullity of marriage?*

The process, which is in fact a judicial trial of the marriage itself, begins with the submission of a petition (*libellus*) by one of the parties, who becomes the petitioner, together with supporting documents such as baptismal certificates, the marriage certificate, and the divorce decree. The petitioner also submits a narrative history of the relationship, relating the personal backgrounds of the parties, their dating and courtship, the wedding itself, their married life, and the events leading to their separation and divorce.

The petitioner also submits information on how to contact the other party, who is the respondent in the case. The tribunal is obliged by the natural requirements of justice as well as canon law to contact the respondent in order to inform him or her of the petition, and to offer the opportunity to participate in the process. The petitioner must, and the respondent may, submit the names, addresses, and telephone numbers of witnesses who can testify about the history of the marriage.

The parties are also asked to appoint advocates from among a pool of tribunal personnel to work with them. Since this is an ecclesiastical trial with no civil effects, civil attorneys are not involved in the process.

When a petition and its supporting documents have been submitted, the case is assigned to a judge who will conduct the investigation. In the process, interviews are conducted with the parties and the witnesses to develop points of particular interest to the judge(s) assigned to the case.

When all the documents, information and testimony have been gathered, the process moves to the evaluation by the defender of the bond,

whose role it is to offer arguments in defense of the validity of the marriage, in the interest of justice. Briefs are submitted also by the advocates of the parties.

The judges, or in some cases a single judge, then proceed to a decision. If the decision is in the affirmative, then the marriage has been found to be null, and, generally, the parties are declared to be free to marry.

12. What is the “briefer process”?

The Archbishop himself can judge cases with a briefer process whenever:

(1) the petition to open the case is proposed by both spouses, or by one of them with the explicit and documented consent of the other, and

(2) the nullity of the marriage is so clear from the circumstances and evidence that the case does not demand a more detailed inquiry or investigation.

It is the Judicial Vicar, appointed by the Archbishop, who makes the determination as to whether the above conditions appear to exist, and that the question of nullity can, therefore, be submitted for the Archbishop’s judgment.

The parties and witnesses are interviewed, the evidence gathered, and briefs submitted within 45 days. After that, the Archbishop renders a decision, or, if the standards of proof for this process have not been met, the matter is referred to the ordinary formal process.

13. How long does the formal process take?

Petitions are taken up in the order in which they are submitted, but there may be a delay in starting a process because of other cases already being heard. Other delays can be caused if there are difficulties in finding the respondent or witnesses, documents, and other evidence. Petitioners should expect that it will take about one year from the time their petition is accepted to its completion, though the time may actually be much shorter.

Once a decision has been given by the judges of the tribunal, the parties have a right to appeal the case to a higher tribunal. Formerly this was an

automatic process, but it is no longer so; now an appeal must be made by one of the parties or by the defender of the bond.

14. Who may petition for a declaration of nullity?

Anyone, whether Catholic or non-Catholic, Christian or non-Christian, may ask that the validity of their marriage be judged by a tribunal.

Non-Catholics will often submit a case because they have been married and divorced, and now wish to marry a Catholic in the Church. As said above, the marriages of non-Catholics are presumed to be valid.

A petition can be submitted to the tribunal of the diocese where the marriage took place, or where either party resides, or where the most proofs are to be found.

15. Is the process confidential?

Generally speaking, the process is confidential. However, it does not come under the sacramental seal of confession or the priest-penitent privilege recognized in some civil law jurisdictions. The tribunal is not exempt from moral and legal obligations to report the abuse of minors and other vulnerable persons.

16. How much does the process cost?

In the Archdiocese of Washington, there are no fees or suggested offerings connected with marriage processes brought before the tribunal.

Questions?

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