

Annulment and Dissolution of Marriage in the Catholic Church

Annulment

Definition -- An annulment is a declaration by a local Diocesan Marriage Tribunal that a marriage never existed as a *sacramental union according to canon law*, (in rare cases an annulment may be decided in Rome). A civil divorce, on the other hand, is a civil dissolution of an existing union. An annulment declares that there never was a valid *sacramental union*, despite appearances to the contrary. A civil divorce recognizes that a valid civil union has indeed taken place, but dissolves it.

It is important to note what this definition *does not* say. It does not say that a relationship, even a loving relationship, never existed between the parties. It does not even say that a marriage never existed between the parties, but only that the marriage was not canonically valid and not considered a sacramental union by the Church. And furthermore it does not say that children born of a canonically invalid marriage are illegitimate. Canon 1137 states clearly and unequivocally that all children are to be considered legitimate who are born of either a valid or a “putative” marriage -- a “putative” marriage in canon law is one which is invalid, but was entered into with a least one party being in good faith.

Annulments are quite common and can be resolved in most dioceses within a year. As the Church has moved from viewing marriage strictly as a contract to viewing it as a covenant, there is a realization that there may be fewer true sacramental marriages than we suppose. Many theologians and canon lawyers have commented that in situations where a marriage has broken down to the point of divorce, it usually points to fact that the conditions for a true covenant marriage, that is, a truly sacramental marriage were probably not present at the time of the marriage. Thus annulment in the sacramental sense become more probable and understandable.

Types of Cases --

A) Formal Cases -- This is the most common type and requires a full Tribunal procedure to legally prove that no valid sacramental union ever took place. These cases focus on the issue of consent. No true consent, no valid marriage. By far, the three most common grounds for declaring a marriage invalid include: psychological grounds, total or partial simulation of consent and force and fear. U.S. Tribunals give about 36,000 decisions in such cases per year.

1) Psychological - By far the majority of all annulments in the U.S. are granted on these grounds. These grounds include intoxication, alcoholism or drug addiction, homosexuality and immaturity. Immaturity is a broad category and includes behaviors at the time of the wedding such as financial irresponsibility; refusal to take care of home or children, excessive dependence on or rebellion from parents, excessive reliance on peer

approval; problem drinking; trouble with police or other authorities; difficulty in holding a job; extramarital affairs; or emotional instability.

2) Total or partial simulation of consent - certainly consent is at the heart of a valid marriage, if it is lacking from one or both partners, the marriage is invalid.

Total simulation of consent takes place when one or both parties go through the outward forms of a wedding without any intention of really contracting a marriage. They are really “faking it” when they say “I do”. This is rare, but can happen to please a parent, give a child a name or perhaps, in the past, to avoid the draft.

Partial simulation of consent can take place when the parties are willing to marry, but withhold certain essential elements of the marriage relationship. In practice these fall into three categories:

-- Intention against fidelity -- One or both partners, at the time of the marriage, had no intention of giving the other exclusive sexual rights.

-- Intention against indissolubility -- One or both partners at the time of the wedding reserved the option to divorce if things did not work out between them.

-- Intention against children -- Since the Church holds that one of the primary ends of marriage is the procreation of children, any intention at the time of the wedding on the part of one or both parties to exclude children constitutes a ground for annulment.

3) Force and fear -- One of the conditions of a valid consent to marry is that the consent must be freely given. These include a range of situations including business or political marriages; the old classic “shotgun wedding”; fear of abandonment by parents; pregnancy in a young person with fear of rejection by parents;

The law requires that the fear be grave and inspired or inflicted from without i.e. by someone other than yourself.

B) Documentary Cases -- Rather than focusing on consent, these cases are a matter of law. Here a person may be eligible to marry, but because of a violation of an invalidating law the marriage is rendered invalid. Invalidating laws include defect of form (some 26,000 cases in the U.S. per year), a previous bond of marriage, and certain diriment impediments. These are defined as:

1) Defect of form -- The Church has set certain requirements for the proper form of Catholic marriages (no such form is required of non-Catholic marriages). Normally, Catholics must be married in the presence of a priest and at least two witnesses. However, with permission, and only with permission, exceptions can be made so that Catholics, especially in mixed marriages, have several options. There are four choices:

- Married in a Catholic Church witnessed by a Catholic priest and two witnesses
- Married in a Catholic Church witnessed by a Catholic priest and a non-Catholic minister and two witnesses.
- Married in a non-Catholic Church witnessed by a Catholic priest and a non-Catholic minister and two witnesses.
- Married in a non-Catholic Church witnessed by a non-Catholic minister and two witnesses.

Therefore, in a case where a Catholic would simply contract marriage by a Justice of the Peace, the marriage would be considered invalid due to lack of proper canonical form.

2) Previous bond of marriage -- A Catholic with a previous valid marriage which has not been annulled or dissolved cannot enter into another marriage during the lifetime of the first spouse.

3) Diriment impediments - These come under the category of disqualifying laws that render a person ineligible for marriage. They are rarely used. These twelve impediments are included in Canons 1083-94.

--Lack of age -- The age of consent for a girl is 14 and 16 for a boy.

--Impotence -- The Church does not consider a marriage consummated until sexual union takes place. This does not include sterility which is neither an impediment nor a ground for annulment.

--Disparity of worship -- This applies to marriages between a Catholic and a nonbaptized person as distinguished from an interfaith marriage between a baptized Catholic and a baptized non-Catholic. This impediment is normally removed by a dispensation from the local bishop.

--Sacred order and religious vows -- Priests and member of religious orders who have pronounced solemn vows may not marry without first obtaining a dispensation.

--Abduction -- This involves force and does not include elopement.

--Murder -- This is rather odd and obviously seldom used, but it involves a case where you or your current spouse murdered your former partner in order to marry each other, because you are currently in an invalid union.

--Consanguinity -- Blood relatives may not marry if the relationship is close. Defined in Canon 1091 as “Consanguinity in the direct line and to the fourth degree collateral line”.

--Affinity -- The ground of affinity extends the consanguinity impediment to the relationship between you and the family of your former spouse, that is, your former in-laws, including mother-in-law, father-in-law, son-in-law, daughter-in-law, or stepchild,

even if your former spouse is deceased.

--Public decency -- Extends consanguinity and affinity impediments to cover common law marriages and other informal sexual relationships.

--Legal relationship -- Cannot marry someone you have adopted or a person closely related in the direct or collateral line to the adopted person.

Dissolution cases

Definition -- A dissolution breaks a marriage bond that is acknowledged to exist, differing from the annulment which declares that the marriage bond never existed. These cases have a long history and the Church makes reference to their possibility in Apostolic times, e.g. St. Paul (1 Cor: 7). They come under a general provision called “The Privilege of the Faith”. They include the “Pauline Privilege” and the “Petrine Privilege” Also included under the category of dissolution are cases of “nonconsummation”.

The Pauline Privilege

This case is restricted to the situation in which *both parties to a valid marriage are unbaptized*. If one later converts and is baptized, he or she obtains the right to break the bond and remarry if the unbelieving spouse refuses to “cohabit peacefully”, which refers to the unbeliever's attempts to hinder the convert in the practice of the new faith.

In the early days of Christianity, becoming a Christian was definitely a counter-cultural event and soon Christians even suffered life-threatening persecution. So the Church was often confronted with a situation in which two non-Christians are married and one spouse converted to Christianity and was baptized, while the other spouse chose not to convert. St. Paul encouraged Christians to remain with their unbaptized spouses if possible. However, when the situation became intolerable, St. Paul decided that in such circumstances the preservation of the faith took priority over even the bond of marriage. This stands in contradiction to the sayings of Jesus (Matt. 19: 3-6) which Paul recognizes by his indication that this opinion is based on his own authority - “I say, not the Lord” in verse 12 of his First Letter to the Corinthians. In Chapter 7, verse 15 he says:

If the unbeliever wishes to separate, however, let him do so. The believing husband or wife is not bound in such cases. God has called you to live in peace.

St. Paul makes no indication whether or not remarriage is possible (most scholars agree that the ability to remarry was assumed), but in fact within the next hundred years the Church used this text to allow remarriage. This judgment was based on the assumption that a marriage between two unbaptized persons is only a “natural bond”, and therefore could be broken if it is “for the good of the faith” to do so. This became known as the “Pauline Privilege” and allowed the marriage to be dissolved. It was allowed even

though the sayings of Jesus in the Gospels made no distinction between “natural” and “Christian” marriage.

It was widely used in the missionary expansion of the Church, but is somewhat rare presently in the West because most people have been baptized in some Christian denomination and the Catholic Church recognizes all valid Christian baptisms.

The Petrine Privilege

This is known as the “Petrine Privilege” because it allows the pope to dissolve a marriage in a situation in which *only one party in a valid marriage is unbaptized*. By definition, this means that, in the eyes of the Church, the marriage is not sacramental (to be sacramental both must be baptized). It is not found in the Code of Canon law, but developed in the U.S. after the promulgation of the Code of Canon Law in 1917.

The Privilege applies to instances when one of the parties to the first marriage (presumably severed in divorce) wishes to marry a Catholic in a second ceremony, or the non-Christian party wants to become a Catholic and remarry. This action is determined to be the dissolution of a non-sacramental marriage by the power of the pope, again based on the need, as in the Pauline Privilege, for the Christian to freely live out the faith. This option is rarely used.

Nonconsummation

Officially designated by the Latin phrase “*ratum non-consummatum*”, these are simply situations in which no completed sexual intercourse took place between the wedded couple. The Church sees sexual intercourse as the final, necessary step for a indissoluble, sacramental marriage. In such cases, the marriage can be dissolved even if both parties are baptized Christians.

These are difficult cases and are only resolved in Rome, because they are seen as an extension of the papal power growing out of the Privilege of the Faith explained above.

Note -- Catholics may in certain cases need to obtain a civil divorce to protect themselves or their rights. However, remarriage after a civil divorce within the Church requires an annulment or dissolution. Catholics who do remarry without an annulment or dissolution are not excommunicated. In May 1977, the Catholic bishops of the U.S. removed the penalty of excommunication in these cases.

Catholics who cannot obtain an annulment or a dissolution are invited to attend the Eucharist and remain involved with the Church, but are restricted from receiving communion at the Eucharist and the other sacraments. Most parishes have support groups for divorced and remarried Catholics in these circumstances.