

EXPLANATIONS OF THE GROUNDS OF NULLITY

There are three major causes of marital nullity, each of which can be further classified into several distinct grounds. First, a marriage can be invalid when there is something deficient in the act of consent. Second, a marriage can be invalid because of some impediment that made one or both of the parties legally unqualified to get married. Third, a marriage can be invalid if there is something deficient in the form of the celebration of marriage. Below you will find a list of the specific ways in which problems with consent, impediments, or form can invalidate a marriage. These are almost all of the possible grounds of nullity. Examples are given for the purpose of illustration and clarification, but keep in mind that some of the grounds can cover a wide variety of circumstances.

I. Defects of Consent

Consent is what makes a marriage. But certain people are not capable of truly giving consent because of some psychological obstacle, error, or lack of freedom. Other people are capable of giving consent, but they withhold something essential from their consent.

Lack of Sufficient Use of Reason (c. 1095, 1°): Permanent or temporary lack of the use of reason due to a severe disability, mental illness, psychological disturbance, or intoxication at the time of the celebration of marriage prevents a person from making an act of consent.

Example: The bride is so intoxicated during the wedding that she is only partially aware of what is happening around her. Afterwards, she barely remembers the ceremony.

Grave Lack of Discretion of Judgment Regarding the Essential Matrimonial Duties (c. 1095, 2°): In order to be able to consent to marriage, a person must possess at least a *minimal* understanding of the *essential* rights and duties of the marital covenant: permanence, fidelity, and openness to children. Substance abuse, psychological disorders, severe emotional imbalance, trauma, extreme immaturity, and other similar factors can deprive a person of the ability to reason about the decision to marry. Note that factors like youth, pregnancy, or moderate pressure do *not* typically result in a grave lack of discretion of judgment on their own.

Example: The bride suffers from obsessive-compulsive disorder. She is consumed with guilt arising from a pre-marital sexual encounter with the groom. She does not love him and has no desire to marry him, but in her mind, marrying him is the only way to rid herself of that terrible guilt. She does not see herself as having any real choice in the matter; her psychological condition essentially compels her to marry, without any consideration for the commitment she is making.

Inability to Assume the Essential Obligations of Marriage (c. 1095, 3°): At the time of the celebration of marriage, one of the parties is altogether incapable of taking on the essential obligations of marriage (permanence, fidelity, and openness to children) for reasons of a psychological nature. The psychological problem must be so severe that it makes it humanly impossible, not merely difficult, to take on the essential obligations of marriage. This impossibility can be caused by a mental illness, a psychological disorder, a severe addiction, or a strong homosexual inclination.

Example: The groom has suffered for years from a severe sexual addiction that makes it humanly impossible for him to remain faithful. Even though he is firmly intent on being faithful to his spouse, his addiction is beyond his control, and he is repeatedly unfaithful.

Ignorance (c. 1096): For matrimonial consent to be valid, it is necessary that the parties at least be not ignorant that marriage is a permanent partnership between a man and a woman which is ordered toward the procreation of offspring by means of some sexual cooperation.

Example: The bride has lived an unusually sheltered life, and she believes that babies are brought by the stork. On the wedding night, she is shocked and disgusted to learn what the groom has in mind.

Error about One's Spouse (c. 1097): Error is an incorrect judgment regarding a fact, not just ignorance about that fact. Error of person (e.g., I thought I was marrying Dan, but I was actually marrying his identical twin brother Stan) makes a marriage invalid. Error about a quality of a person (e.g., some personality trait, some fact in the person's history, the person's occupation) does *not* make a marriage invalid unless the quality is directly and principally intended. In other words, the quality is desired more than the actual person.

Example: The bride is pregnant. She wants to marry the father of the child. Whoever the father of the child is, that is who she wants to marry. Her *only* reason for getting married is to be married to the father of her child. She marries the groom because she believes he is the father, but a paternity test later reveals the father to be somebody else.

Fraud (c. 1099): a person's consent is invalid if it is given as a result of being deceived by fraud that (1) is intentionally inflicted in order to get that person to give consent and (2) concerns some quality of the other party which of its very nature can seriously disturb the partnership of marriage. The deceit can be perpetrated by the other party or even by some third party (e.g., a parent).

Example: The groom has extensive debts. He fears that the bride would not marry him if she knew about the debts, so he purposely conceals them from her in order to get her to marry him. The bride does not find out about the debts until after the marriage. When the debts are discovered, they cause a serious disturbance in their married life.

Error about marriage (c. 1098): Normally, error about the unity (marriage is to one person), indissolubility (marriage is for life), or sacramental dignity (marriage between the baptized is a sacrament) of marriage does *not* make a marriage invalid. Error of this kind only invalidates when it determines the will. In other words, the error is so deeply held that, in the person's mind, the only kind of marriage that exists is unfaithful marriage, or dissoluble marriage, or non-sacramental marriage. The alternative never seriously enters his or her mind.

Example: The groom's parents were divorced when he was very young. Both his parents have since been married several times, with each marriage ending in divorce. All of his aunts, uncles, siblings, and close friends have been married several times to several different people. In his mind, marriage ends when things get difficult, and he has never really considered the possibility of an indissoluble marriage. When he promises to stay with his wife "until death do us part," he thinks it is just a nice figure of speech.

Total Simulation (c. 1101 §2): One or both parties has no intention to establish any kind of marital partnership, but has some totally unrelated goal that can be achieved through the appearance of marriage. The ceremony itself is essentially a sham.

Example: The groom wants a green card in order to be able to remain in the US. He convinces the bride to marry him solely for that purpose. They have no intention to cohabit or establish any kind of married life, except as necessary to convince immigration officials. The day the green card arrives in the mail, the parties shake hands and separate, just as they had intended to do all along.

Partial Simulation (c. 1101 §2): In spite of what the parties say in their marriage vows, one or both of the parties actually wills against one of the essential elements of marriage (marriage is ordered to the procreation and education of children and to the good of the spouses) or against one of the essential properties of marriage (unity and indissolubility).

(1) Simulation against the good of children: By its nature, marriage is directed toward bearing and raising children. By marrying, spouses give each other right to procreative acts, even if those acts cannot or do not end up resulting in pregnancy due to infertility, age, etc. If, at the time of marriage, a party excludes this right, the party marries invalidly.

Example: The bride and the groom agree before the wedding that they will never have any children. They use contraception throughout the course of their marriage. When they conceive a child despite using contraception, they choose to have an abortion.

(2) Simulation against the good of fidelity: As terrible as adultery is, it does not make a marriage invalid. But if a party enters marriage while *intending* to be unfaithful, at least hypothetically, that intention makes the marriage invalid. In other words, the party must consider bigamy or adultery to be a right.

Example: The groom has a girlfriend on the side throughout the courtship and during the engagement. He intends to keep his girlfriend even after the marriage. Even though he doesn't want to be found out, he has no remorse whatsoever about this arrangement.

(3) Simulation against the good of permanence: Marriage lasts until death. No matter how bad things get, even if the parties may have to separate, the bond of marriage remains, making a second marriage impossible. However, if a party enters marriage while reserving a right to dissolve the marriage (through divorce) and potentially remarry, that party marries invalidly.

Example: The bride wants this marriage to last forever, and she believes that it will. She knows, however, that if things ever get too hard, she can decide to end the marriage, and after a divorce she will be free to start over and get married again.

(4) Simulation against the good of the spouses: By its nature, marriage is directed to the good of the spouses. When parties marry, they agree to enter a partnership that is ordered towards their mutual well-being. If one of the parties actually intends to enter a marriage that is ordered toward the harm or corruption of the other party, the party marries invalidly.

Example: The groom is an intensely selfish person. He asked the bride to marry him, but what he was really after was a live-in maid. The bride is also very wealthy, and the groom intends to spend her money on himself and leave her penniless. In his mind, the marriage is solely for his own benefit, and if it ends up making the bride miserable, that's just too bad.

Conditioned Consent (c. 1102): One or both parties consents to marriage *if and only if* a certain condition is fulfilled. If the condition is not fulfilled at the time of the marriage, or if the condition relates to the future, the marriage is invalid.

Example: The bride is pregnant at the time of the wedding, and the groom is uncertain if the baby is his. When he consents to the marriage, he consents strictly under the condition that he is the father. That is the only circumstance under which he is willing to enter marriage. In his mind, the marriage only exists if he is the father. When the baby is born, a paternity test determines that the groom is not the father, and he leaves immediately.

Force or Fear (c. 1103): When a person experiences force or grave fear inflicted (even unintentionally) by some other person(s), and this force or fear is so great that the person feels compelled to choose an otherwise undesired marriage to be rid of the force or fear, then the marriage is invalid.

Example: The bride is pregnant. She does not want to marry the child's father, but her parents have threatened that unless she "does the right thing," they will cut her off financially and never speak to her again. She has no income other than her parents' financial support, and her parents' love and approval mean everything to her. She is afraid to lose them and afraid of ending up on the streets with a baby, and so she ends up getting married because she sees it as her only option.

II. Impediments

Impediments disqualify one or both parties from entering marriage. In general, the Church is extremely cautious about discovering impediments before marriage, but sometimes they can remain undiscovered until after the marriage. The following are some impediments that are more likely to be overlooked.

Prior Marriage: Marriage is for life. If either of the parties has previously been validly married, and the previous spouse is still living, there can be no second marriage. (Note, however, that if the first marriage

is later discovered to have been invalid, there was never any impediment to the second marriage).

Example: The groom has been married before, for only a year right after college. There were no children and the split was amicable. He considers it a “starter marriage,” and doesn’t even bother to mention it to the priest during marriage preparation.

Disparity of Worship: Without a dispensation from the Church, a Catholic cannot validly marry a person who has never been baptized. This impediment is often dispensed, but sometimes the need for dispensation is overlooked. Note that this impediment only applies to marriages between Catholics and non-baptized persons, and *not* to (1) marriages between baptized non-Catholics and non-baptized persons, nor to (2) marriages between Catholics and baptized non-Catholics.

Example: The bride is Catholic and the groom attends a non-denominational church. The groom’s brothers and sisters were all baptized, and the groom has always assumed that he was also baptized. The parties get married without a dispensation from Disparity of Worship. After the wedding, the groom finds out from his mother that he was never baptized. The non-denominational church’s records support the fact that the baptism never occurred.

Antecedent and Perpetual Impotence: A person who is permanently, medically incapable of performing the sexual act is impeded from marriage. This is not to be confused with simple infertility or even total sterility, which do not make a marriage invalid.

Example: Years before the wedding, the groom’s genitals were severely damaged in an explosion during military combat. Without reconstructive surgery, he will remain permanently incapable of sexual intercourse.

Crime: A person who brings about the death of his or her own spouse or somebody else’s spouse in order to marry somebody is impeded from getting married.

Example: A man’s wife has been in a coma for many years. The man has since fallen in love with another woman, but he knows he cannot marry her while his wife is still alive. The man has the doctors remove the wife’s feeding tube so that he can finally remarry when she dies of starvation.

Consanguinity, affinity, public propriety, and adoption: The law prohibits marriages between certain close blood relatives, as well as certain in-laws. It also prohibits marriage between a person and the parent or child of someone with whom that person has publicly cohabited, even if there was no previous valid marriage. Finally it prohibits marriage between certain people related by adoption.

III. Defects of Form

Catholics are required to marry according to the form specified by the Church, namely, in the presence of a priest or deacon who asks for and receives a manifestation of consent, and in the presence of at least two additional witnesses. Very often, the Church authority grants a dispensation allowing for some other form of marriage, such as marriage by a Protestant minister. But when there has been no dispensation, Catholics do not marry validly unless they marry according to the required form.

Lack of Form: When a Catholic, even a non-practicing Catholic, attempts to get married outside of the Church without a dispensation, the marriage is invalid.

Example: The groom was baptized a Catholic, but long ago he lost all interest in practicing his faith. The parties get married in front of a justice of the peace.

Defective Form: When the form of marriage is generally observed, but some required element is missing, the marriage is invalid.

Example: The bride and groom have a “destination wedding” at a church in Cancun, and they bring their priest-friend along to officiate. The priest friend never bothers to obtain the

delegation to officiate, which is required for validity.