

## **GROUND OF MARRIAGE NULLITY**

The following are the possible grounds that can be used in a marriage case before a Tribunal. There is a brief description, a list of questions relating to the ground and a short list of proofs required for each ground. The judge(s) decides each case solely on the basis of whether the grounds are proven by the testimony submitted by the parties, their witnesses, and expert consultants.

Every marriage case must have at least one ground. In the Petition submitted to the Tribunal the Petitioner will have suggested possible grounds and explained in a written statement why they believe those grounds apply to their case. After the case has been accepted by the Tribunal the Respondent will be notified and will have a limited time to respond to alleged grounds and offer written testimony, after which the Judge will set the actual ground or grounds for the case. The parties will be notified of the grounds. They may express their objections to the chosen grounds if they so choose and the Judge may then reconsider. The Judge may select several grounds at the beginning of the case. In the end, the testimony of the parties and witnesses will determine the best ground on which to judge the case.

In the questions provided to ask the petitioner no single question is enough to prove the ground. Rather several questions would have to be answered in the affirmative to conclude the presence of a given ground.

### **DEFECT OF CONSENSUAL CAPACITY**

*Can. 1095 The following are incapable of contracting marriage: 1/ those who lack the sufficient use of reason; 2/ those who suffer from a grave defect of discretion of judgment concerning the essential matrimonial rights and duties mutually to be handed over and accepted; 3/ those who are not able to assume the essential obligations of marriage for causes of a psychic nature.*

#### **INSUFFICIENT USE OF REASON Canon 1095, 1° those who lack the sufficient use of reason**

To enter a valid marriage, a person must have the degree of reasoning ability sufficient to know and understand what marriage is and what he or she is doing at the time of marriage. Serious conditions, such as profound mental retardation, certain personality disorders or black-out states (caused by alcoholic intoxication, drug use, or seizure disorder at the time of the exchange of vows), might prevent a person from possessing or using reasoning ability during the marriage ceremony. If one or both spouses lacked the use of reason during the wedding ceremony itself, this ground can be considered.

*Did either of you use drugs or alcohol before the wedding ceremony and were intoxicated, “stoned”, or “high” during the ceremony? Were either you or your former spouse ever diagnosed with a very low intelligence or with a serious learning disability, or serious difficulty with the ability to reason? Were either of you ever diagnosed with a mental disability or a mental illness that caused blackout or delusional episodes? If so, did such an episode occur at the time of the wedding ceremony? Did either you or your former spouse suffer from epilepsy and grand mal seizures? If so, did a seizure occur just before or during the wedding ceremony?*

#### **GRAVE LACK OF DISCRETION OF JUDGMENT Canon 1095, 2° those who suffer from a grave defect of discretion of judgment concerning the essential matrimonial rights and duties mutually to be handed over and accepted;**

To enter a valid marriage, a person must have use of sound reason and mature judgment. This means that the person is capable of making a prudent and free decision, after careful judgment, to enter marriage with a particular person. If one or both spouses either lacked the capacity to properly discern in a mature manner or was incapable of making a mature judgment in choosing to marry, this ground can be considered. This ground requires a grave lack of discretion of judgment, and often times will need to be supported through a current psychological assessment to determine long standing personality traits.

For the immaturity therefore to be so severe as to render the person incapable of discerning, thus rendering the marriage invalid, there are at least four requirements:

- **That the immaturity emanate from a cause of a psychic nature.**

That immaturity which is connected simply with adolescence, that is, something transitory which corresponds more with a lack of life experiences than with a radical defect of personality does not qualify.

But when that immaturity comes from an erroneous or distorted education which the subject had received, and it is considered somewhat more serious because of the particular conditions of family and society, such immaturity, which obstructs the normal evolution of character, leaves the subject adrift in the oedipal phase of life, so that, in making all that persons decisions, whether before or after the marriage, the person remains in a position that is overly amenable to the persons parents or to any other persons in whom they have confided.

- **That it be grave.** Levity in a cause of a psychic nature suggests mere difficulty of discharging ones duties. It is not required that the ailment be incurable; it is sufficient to prove its existence and its gravity at the time when consent was given. Incurability per se has importance only in determining the gravity, not the incapacity.
- **That the subject be incapable of assuming the essential obligations of marriage, which at the moment of the manifestation of consent had to be given and accepted by the parties.**
- **That the psychic cause occur before the marriage, at least in a latent form, even if it calmed down fully after the wedding.**

If the incapacity took place only after the nuptials because of the particular circumstances in which the spouses found themselves, it must be considered irrelevant, since it cannot be brought back retroactively to the time of the marriage.<sup>89</sup>

*Did either you or your former spouse come from a family background of severe codependency or were one or both parents afflicted with alcoholism? Did either of you have extremely little or no dating experience before becoming engaged? Were either of you getting married to escape a bad home life? Did either of you have unrealistic expectations of marriage? For example; were there negative aspects of your former spouse that you thought you could change in marriage? Did either of you see marriage as simply “the next step” without much consideration? Did the two of you date for only a brief time? Was the decision to marry made impulsively, or without much thought? Did either of you make immature and impulsive decisions in other areas of life (career, finances, etc.)? Were either of you ever diagnosed with a personality disorder (bipolar, histrionic, reactive attachment, paranoid etc.)? Were either of you on drugs or abusing alcohol during the courtship? Did either of you suffer from a sexual addiction? Was your decision to marry based on some pressing issue or circumstance (for example, a pre-marital pregnancy, difficult home situation, peer pressure, escape from another relationship)? Did family or friends express serious concerns about this marriage and did you choose to ignore them?*

- **Proofs Required in a Case of Incapacity to Exercise Discretion of Judgment**
  - The fact of the grave lack of discretion concerning the essential rights and duties of marriage;
  - A reason for the lack of discretion (illness, stressful circumstances, etc)
  - Proof that the lack of discretion was sufficiently grave with regard to the choices made (namely, marriage in this person’s life at this particular time with a specific partner).

**INCAPACITY TO ASSUME THE ESSENTIAL OBLIGATIONS OF MARRIAGE Canon 1095, 3<sup>o</sup> those who are not able to assume the essential obligations of marriage for causes of a psychic nature.**

Number 3 of the canon differs from the previous two numbers which spoke of an incapacity to make the practical judgment to consent to the marriage. In 3<sup>o</sup> the person is able to consent, but unable to live out that consent once it has been made. To enter a valid marriage, a person must have the psychological ability to take on and to live out the lifetime obligations of marriage. A person cannot consent to something that is beyond his or her psychological capacity to fulfill. Even if the condition became known or diagnosed only after marriage, if a person was afflicted at the time of marriage with a serious psychological or psychiatric condition that prevented him or her from assuming the obligations of marriage, the marriage was invalid. Proof of the condition must be provided, however, and often the Tribunal will require a current evaluation by a mental health professional. The ground requires incapacity and not merely diminished capacity.

- **Essential obligations of marriage**
  - *the right and obligation to conjugal acts;*
  - *the perpetuity of the right and obligation to conjugal acts;*
  - *the exclusivity of the right and obligation to conjugal acts;*
  - *the right and obligation to conjugal acts mensura normali et modo naturali;*
  - *the right and obligation to the physical well-being of the child from the moment of conception;*
  - *the right and obligation to the moral and spiritual upbringing of the child;*
  - *the right and obligation to interpersonal relationship (communio vitae).*
  - *the right and obligation to the bonum coniugum (the good of the spouses)*
    - good of the spouses“ that is brought about by the acceptance of and compliance with substantive interpersonal and intrapersonal marriage obligations, consists in living a truly conjugal life which in turn implies that husband and wife assiduously and patiently render mutual counsel and concern, mutual assistance and support, all of which ultimately lead also to their mutual spiritual, moral, financial and social benefits.
- **Incapacity not Difficulty**
  - It must be shown that the failure to establish a normal marital relationship was due not to moral weakness or malice, but to some psychological cause which pre-existed, or at least was present at the time of the marriage, and which was so serious that it rendered it impossible, not just difficult, for the individual to take on the essential obligations
- **Antecedence and Perpetuity**
  - For incapacity to affect consent, the illness or cause of the incapacity must precede the exchange of consent. Although the illness or cause might not be fully-manifest at the time of the consent, it must be clear that at least the roots of the problem predate the exchange of consent.

*Were either you or your former spouse diagnosed with a serious psychological illness? Even without a specific diagnosis, did either of you suffer from a serious mental illness at the time of your marriage? Did either of you have any addictions at the time of the wedding (alcohol, drugs, prescription drugs, sexual addiction etc.)? If yes to any of these questions, did the illness or addiction prevent either of you from living out the commitment you made to each other or to your children? At the time of your marriage, did either of you have any serious sexual disorder, serious questions about your sexual identity, or homosexuality? If so, did this affect the ability to live out the commitment to marriage?*

- **Proofs Required for a Case of Incapacity to Assume the Essential Obligations**
  - The presence of a psychological impairment which deprives one or both parties of the capacity to assume the essential obligations of marriage;
  - The psychological impairment must be grave, depriving a person of the capacity to assume the essential obligations of marriage.
  - The psychological impairment must be antecedent, even if only latent, to the exchange of consent and continued through the period when consent was exchanged.



## DEFECTS OF KNOWLEDGE

*IGNORANCE OF THE SOCIETAL NATURE OF MARRIAGE Canon 1096 §1. For matrimonial consent to exist, the contracting 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. §2. This ignorance is not presumed after puberty.*

This canon concerns those individuals who would understand if they were given the information. Somehow, due to culture or circumstances the person does not know the minimum concepts that the canon enumerates, which knowledge is presumed after puberty. To enter a valid marriage, a person must have some basic knowledge (i.e., not be ignorant) of what marriage is all about. A necessary element of that knowledge is to know that marriage is a permanent partnership between a man and a woman. If a person truly has no knowledge that marriage is such a partnership, because of tragic or extremely dysfunctional circumstances in his or her personal or family background, this ground may apply.

- **Permanence:**
  - Marriage is a stable arrangement. This is not strictly the same as indissolubility, which if excluded may be the result of error (c. 1099) or simulation (c. 1101, §2). Consequently, a formal understanding of indissolubility is not required by this canon
- **Partnership (consortium):**
  - a basic, rudimentary understanding of the marital partnership is required

*Did either you or your former spouse come from a family background where there were many divorces, separations, or live-in relationships? Did either of you have the experience of growing up in several households, whether among relatives or foster parents? Did either of you grow up in an institution, such as an orphanage? If so, can you say that there was never a role model for a happy or healthy marriage? Can you say that either you or your former spouse did not know when you married that marriage is a permanent partnership? Were either of you reared in an environment that was extremely sheltered (to an unhealthy degree)? Were there any cultural factors that influenced your knowledge of what marriage was all about? Were either of you surprised or shocked after marriage by what marriage was all about? Did you separate or divorce quickly after discovering what marriage was all about?*

### *IGNORANCE OF THE SEXUAL NATURE OF MARRIAGE (Canon 1096)*

To enter a valid marriage, a person must have some basic knowledge (i.e., not be ignorant) of what marriage is all about. A necessary element of that knowledge is to know that marriage by its nature involves openness to children by means of sexual cooperation between the spouses. Although such ignorance is not presumed in persons beyond the age of puberty, this ground may be considered if one or both spouses were truly ignorant of this fact.

- **Heterosexuality:**
  - Marriage is a heterosexual relationship.
- **Procreative ordering:**
  - Marriage involves a sexual relationship between the man and the woman which is open to procreation. One need not know the detailed specifics of that sexual cooperation but must know that some genital activity is required.<sup>110</sup>

*Were either you or your former spouse extremely young when you began dating the other? If so, was this dating relationship the only one before marriage? Did either of you come from a family background where there was no discussion at all of sexuality? Did either of you enter marriage with absolutely no understanding of human sexuality and sexual intercourse? Were either of you reared in an environment that was extremely sheltered or sexually repressed (to an unhealthy degree)? Were there any cultural factors that influenced your knowledge of human sexuality and sexual relations? Were either of you surprised or shocked after marriage to learn about sexuality or sexual relations? Did you separate early in the marriage because of an unwillingness to engage in sexual relations?*

- **Proofs Required for a Case of Ignorance**

- That there exists an idea of “marriage” that is fundamentally deficient;
- That ignorance exists about at least one of the three concept points enumerated by the canon;
- A reason why such ignorance would exist after puberty.
- Lawrence Wrenn (an expert on Rotal Jurisprudence) identifies a number of practical criteria to be used in causes concerning ignorance:
  - **psycho-physical criterion:** more common in those having late physical maturity or subnormal sex drive.
  - **educational criterion:** more common in asocial persons, those with rigid or narrow education, those with an outdated and constricted moral formation, or those with extremely severe parents.
  - **preuptial criterion:** more common in those pushed into marriage, or childish, silly, and immature during their courtship.
  - **postnuptial criterion:** focus is on the first attempt at intercourse: evident in those who find the attempt at intercourse a horror or repugnant, or who cannot be persuaded into intercourse by the gently prodding of the spouse.

**ERROR OF PERSON Canon 1097, §1. Error concerning the person renders a marriage invalid.**

This canon concerns mistaken identity: one cannot validly marry the wrong person (e.g., a twin sibling) by nature itself. To enter a valid marriage, one must know the person he or she is marrying. In other words, marital consent is exchanged with a specific man or woman and it is essential to have true knowledge of who that person is. If one spouse made a substantial error in judgment concerning the true identity of the intended spouse, or in other words married the wrong person, this ground could be considered. The error in question is not about details of personality or behavior, but a serious error about the identity of the other spouse.

*Did you and your former spouse know one another for only a very short time before marriage? Was your courtship at a distance? Did you actually spend very little time together, alone, before marriage? Was your intended spouse not the person you thought you were marrying? Did you discover after marriage that the person you married was not, in fact, the person you intended to marry? Did you react with shock or surprise when the error was discovered? Did you separate immediately afterward, or did your marital relationship change immediately afterward?*

- **Proofs Required for a Case of Error of Person**

- Why did the person marry the wrong party?
- How did the party react when the person’s identity was discovered?

**ERROR ABOUT A QUALITY OF A PERSON Canon 1097, §2 Error concerning a quality of the person does not render a marriage invalid even if it is the cause for the contract, unless this quality is directly and principally intended.**

To enter a valid marriage, one must know the essential qualities of the person he or she is marrying. If, at the time of marriage, one spouse was mistaken about a quality directly and principally intended in the other spouse (almost as a condition for marriage) then this ground could be considered. This ground might apply if you or your former spouse intended to marry someone who possessed a certain quality (perhaps of a moral, social, physical, religious, psychological, or legal nature) and the primary reason for entering this marriage was the belief that the intended spouse possessed that quality. The intended quality must be of such a magnitude that without it, the person would not have married the other.



*Was there a certain quality or trait that either you or your former spouse were looking for in a prospective husband or wife (for example, a certain social status, marital status, education, a certain profession, religious conviction, freedom from addiction or disease, freedom from an arrest record)? Did you or your former spouse consider that trait so important in a prospective spouse that you would marry only someone who possessed that trait? Would this marriage have been called off if the other person did not possess that quality? When it was learned that you or your former spouse did not possess that quality, did the other spouse react with shock or surprise? Did you separate immediately afterward, or did your marital relationship change immediately afterward?*

- **Proofs Required for a Case of Error of Quality**

- The quality must be grave or important at least to the person in error;
- The consent must be given primarily to the quality and only secondarily to the person (in other words, there must be proof that this quality was “directly and principally intended”);
- There must be proof that the person was in error. If the person knew that the quality did not exist, then error does not exist;
- The most revealing proof in such cases comes from the person’s reaction when he or she discovers that he or she has been in error. If the reaction is strong and the person chooses to leave the union or at least somehow disrupt common life, then there is a strong presumption that the person was in error as described by canon 1097. If the person did nothing, or was not perturbed to discover his or her error, then that is often seen as proof that the quality was not primarily intended. Rather, a true marriage was primarily intended.

*FRAUD OR DECEIT Canon 1098 A person contracts invalidly who enters into a marriage deceived by malice, perpetrated to obtain consent, concerning some quality of the other partner which by its very nature can gravely disturb the partnership of conjugal life.*

A person who enters marriage deceived by fraud, which is perpetrated to obtain the marital consent of the other person, marries invalidly. Fraud is the intentional act of deception. It can be perpetrated by the other spouse or by a third party, but the end result is the same: one of the contracting parties consents because he/she was deceived into doing so. If fraud or deceit took place in order to make marriage happen, this ground can be considered.

*Did you or your former spouse intentionally misrepresent or conceal information necessary for the other person to make a well-informed marital decision? Did someone else (a parent, for example) misrepresent or conceal information necessary for a well-informed marital decision? Was the deception intentionally done in order to get the other person's agreement to marry? If the truth had been known, and the deception not carried out, would the marriage not have occurred? If the deceit was later discovered, did it have an immediate effect on the marriage? Did the separation or divorce occur because of this?*

- **Proofs Required for a Case of Error Induced by Fraud or Deceit**

- Reasons or motives for perpetrating the deception (the deception can be perpetrated by the other spouse, or by a third party);
- That the quality concerned in the deception is sufficiently important to the parties and the marriage;
- That the person in error did not know of the deception at the time of consent;
- The reaction of the person who was deceived when the deception was uncovered or the disruption of common life resulting from the deception.



**ERROR CONCERNING THE UNITY OR INDISSOLUBILITY OF MARRIAGE** *Canon 1099 Error concerning the unity or indissolubility or sacramental dignity of marriage does not vitiate matrimonial consent provided that it does not determine the will.*

**ERROR CONCERNING UNITY**

For marriage to be valid, both spouses must intend to be absolutely faithful to one another. If one or both spouses entered marriage with an erroneous belief that infidelity, polygamy, or polyandry was possible, this ground could be considered. This belief must have been firmly held, or in other words, marriage could not be conceived of in any other way than allowing for infidelity or multiple spouses or sexual partners.

*Did either you or your former spouse believe that it was acceptable to have other sexual partners after marriage? Was there anything in the family background to explain the belief that marriage was not an exclusive (totally faithful) relationship? Were you or your former spouse reared in a home environment where there was sexual infidelity, or cohabitation, or several sexual partners? Did either family consider infidelity or living together acceptable or desirable? Had either you or your former spouse been unfaithful in previous relationships? Were either of you reared in a home in which no religion was practiced, or a religion that accepted polygamy? At the time you married, did you or your former spouse accept the notion of an “open” marriage? Did either of you accept the idea of multiple sexual partners, or “exchanging” partners with others? Were either of you unfaithful during your courtship or engagement? Did either of you consider cohabitation or living together to be acceptable or desirable? Were either or both of you sexually unfaithful during the marriage?*

**ERROR CONCERNING INDISSOLUBILITY**

For marriage to be valid, both spouses must agree to the absolute permanence of marriage. If one or both spouses entered marriage with an erroneous belief that marriage may be a temporary arrangement, that divorce was always an option, or that remarriage was always a possibility, this ground could be considered. The error could include the notion that marriage lasts only as long as the spouses decide, or only as long as they remain in love, or that the state has the authority to dissolve a marriage. This belief must have been firmly held, or in other words, marriage could not be conceived of in any other way than allowing for the possibility of ending or dissolving the marriage.

*Were either you or your former spouse reared in a home with no religious practice? Were either of you from a family background in which there were multiple instances of divorce and remarriage? Did either of your families consider divorce and remarriage acceptable or desirable? Did either you or your former spouse believe that your marriage would not be permanent? Did you sign a pre-nuptial agreement because you thought the marriage might not be permanent? Did either of you accept the idea of a “trial” marriage, with the understanding that you could divorce if it did not work out? At the time you entered this marriage, would you have said that you could divorce and remarry for a particular reason (for example, physical abuse, adultery, unhappiness, illness)? If you and your former spouse had been told that divorce and remarriage would be impossible for any reason, would either of you have backed out of the marriage? Did either of you clearly believe that it was your right to divorce or remarry at will?*

**ERROR CONCERNING THE SACRAMENTAL DIGNITY OF MARRIAGE**

A person may enter marriage validly when he or she is in simple error (holding a false opinion) about the sacred character or sacramental nature of marriage between two baptized people. However, if one or both spouses entered marriage with an erroneous belief that marriage is simply a civil or secular matter and that it has no relation to the sacred for the baptized, this ground may be considered. This belief must have been firmly held, or in other words, marriage could not be conceived of in any other way than as civil or secular in nature.

*Did either you or your former spouse come from a family environment in which there was no practice of religion? Did either of you come from a religious background which taught clearly that marriage is not a sacrament or not a sacred bond? Did either of you firmly believe that marriage was merely a civil contract, having only civil effects, with no relationship to religion or the Church? Were you married by a judge or civil official, because you did not want a church wedding? Did either or both of you intend to enter only a civil contract of marriage, with no thought of religious overtones? If yes to any of the above questions, would that spouse have called off the marriage if the other person insisted on a church wedding, or insisted that marriage was a religious matter? Did either of you believe so strongly that marriage was only secular in nature that you could never envision marriage as having some religious or sacred element to it?*

- **Proofs Required for a Case of Erroneous Opinions about Marriage**
  - Proof that the person was in error regarding the Church's teaching of the unity, indissolubility, or sacramentality of marriage, and that there did not exist any doubt to the contrary in that person's mind;
  - Proof that this error was so deeply rooted as to have determined the will, in other words, that the person could not conceive of any other kind of marriage. For this, one looks to the person's upbringing and how his or her attitudes about marriage developed. The presumption is that most people marry with the intention that the Church would intend, thus the contrary must be proven to be consistent with the person's personality and upbringing.

## RADICAL SANATION

Can. 1100 The knowledge or opinion of the nullity of a marriage does not necessarily exclude matrimonial consent.

- **Marriages may be invalid for different reasons, due to:**
  - a defect of form;
  - an undispensed impediment; or because of
  - a defect of consent.

The facts that one or both parties know (or, at least, consider it probable) that the marriage they are about to enter is invalid does not, in itself, preclude their eliciting naturally sufficient consent. This canon provides the basis for the sanation of marriages invalid due to an impediment or a defect of the form.

- **In this context three situations are possible:**
  - That a person enters marriage knowing that an impediment exists. The person knows that the marriage is invalid, but wishes to attempt to marry nonetheless. Marriage consent exists, and so there is a basis for a possible validation of the marriage should the impediment cease.
  - That a person enters marriage thinking that an impediment exists. If the person is incorrect and the impediment does not exist, the consent was sufficient and the marriage is valid.
  - A Catholic may know the Church will not recognize a marriage attempted before a civil magistrate without a dispensation from canonical form, but genuinely wishes to marry the partner. Real matrimonial consent exists and thus there is the basis for the eventual validation of the marriage.

In these examples the consent given is (presumably) naturally sufficient but was not effective if the impediment existed or canonical form was not observed. If the consent persists, then the union can later be validated through sanation as long as the consent persists.



## DEFECTS OF THE WILL

*SIMULATION OF MARRIAGE* (Canon 1101 §1. *The internal consent of the mind is presumed to conform to the words and signs used in celebrating the marriage.*

§2. *If, however, either or both of the parties by a positive act of the will exclude marriage itself, some essential element of marriage, or some essential property of marriage, the party contracts invalidly.*

### Types of Simulation

- **The canon speaks of three kinds of nullity:**
  - exclusion of marriage itself (**total simulation**);
  - exclusion of an essential element of marriage (**partial simulation**);
  - exclusion of an essential property of marriage (**partial simulation**).

*TOTAL SIMULATION OF MARRIAGE.* To simulate consent means to say one thing externally, but to intend something quite different internally. Total simulation of marriage means that one or both spouses, at the time of marriage, did not intend to enter a real marriage. Instead, something quite different was intended. This ground may be considered if one or both spouses “pretended” to marry, and did not intend to enter a genuine, lasting marriage.

*Was this an arranged marriage, that is, you and your former spouse were “told” to marry by someone else such as your parents? Did you and your former spouse agree to marry for some reason other than being in love and wanting to marry one another? Was there some reason you decided to go through a wedding ceremony without being in love (for example, to obtain citizenship, to escape your childhood home, or for insurance, welfare, or financial purposes)? If yes to any of these questions, did you separate shortly after marriage, or as soon as other conditions were met?*

### PARTIAL SIMULATION

#### INTENTION AGAINST “THE GOOD OF PERMANENCE”

A valid marriage includes three essential “goods”—children, fidelity and permanence. If one or both spouses entered marriage with the intention to exclude the lifelong permanence of marriage, this ground can be considered. Marriage, by its very nature, is a permanent partnership which cannot be broken or dissolved by the spouses themselves. The marriage is invalid if one enters it with the intention to make the marriage only temporary, to keep divorce and remarriage as an option, or reserving the right to decide at any time to end the marriage.

*Did either you or your former spouse believe that you had the right to end the marriage at any time and possibly remarry someone else? Did either of you intend a “trial marriage?” Did either of you come from a religious background which taught that divorce was acceptable, perhaps under certain circumstances (for example, adultery, physical abuse, unhappiness, illness)? Were either of you divorced and remarried several times before entering this marriage? If so, did that person view marital commitment in such a way that it necessarily included divorce as a possibility? Was divorce seen as an option for dealing with an unhappy marriage? Was there a history of divorce in either your family or your former spouse's, or among friends? Did you sign a pre-nuptial agreement because you thought divorce would be an option? Do you think the marriage would have been called off if you and your former spouse had been told that marriage was absolutely indissoluble, and that divorce was never possible?*

#### INTENTION AGAINST “THE GOOD OF CHILDREN” (Canon 1101)

A valid marriage includes three essential “goods”— children, fidelity and permanence. If one or both spouses entered marriage with the intention to exclude children, this ground can be considered. This can take several forms: an outright intention to have no children in the marriage, a delay or postponement of children for illicit reasons, sterilization, or consistent use of birth control to avoid pregnancy. The result is usually that no children are conceived after the wedding day.

*Did either you or your former spouse believe firmly that you had the right to determine when and if you would have children in this marriage? Did either of you enter marriage with the intention to delay or postpone childbearing until some later time? Was there a definite time or condition for having children later in the marriage, but not right after marriage (for example, after completing school, or after saving money, or after a certain number of years)? Was there a decision before marriage to have no children together? Even if there was a pre-marital pregnancy, was there the intention to have no other children in the marriage? Was there a limit on the number of children you would have in the marriage? If yes to any of these questions, were there definite means taken to avoid pregnancy (for example, contraceptives or birth control drugs or devices, abortion, sterilization by vasectomy or tubal ligation)?*

### **INTENTION AGAINST “THE GOOD OF FIDELITY” (Canon 1101)**

A valid marriage includes three essential “goods”—children, fidelity and permanence. If one or both spouses entered marriage with the intention to exclude absolute fidelity, this ground can be considered. Fidelity or exclusivity in marriage means to have only one's intended spouse as a sexual partner for life. Absolute fidelity prohibits openness to any other sexual relationships. When one enters marriage with the intention of excluding such absolute fidelity, remaining open to the possibility or deciding they may choose whether to have other sexual partners, the marriage is invalid. It is important to note that what invalidates the marriage is the intention, present from the beginning, to permit infidelity - not actual infidelity. Adultery itself is not a ground of nullity.

*Did either you or your former spouse believe you had the right to determine if you would have other sexual partners during this marriage? Did either or both of you intend to have an “open” marriage which would permit other sexual partners? Did either of you come from a family background where there were many sexual partners, or live-in companions, or were your parents sexually unfaithful during their marriage? Was sexual infidelity acceptable to either you or your former spouse? Did either of you view marriage in such a way that it would permit sexual infidelity or multiple sexual partners? Were either of you unfaithful to the other during your engagement? Were you sexually active before marriage? Did you cohabit with your former spouse before marrying? Did either of you cohabit or live with another person before this marriage? Was there actual infidelity during your marriage?*

#### • **The intention required for simulation:**

##### ○ **A positive act of the will**

- Simulation involves a *positive act of the will* to exclude (reject) which one knows must not be excluded. The simulator *knows* he is simulating (at least when he is asked). The internal act contrary to the words being pronounced in the marriage ceremony has a nullifying effect only when it is placed by a positive act of the will.
- The intention to simulate *does not have to be actual* (i.e., thought of during the exchange of consent) but *can also be virtual* (i.e., thought of and formulated beforehand and continuing in effect though not actually considered during the exchange of consent)
- The act of the will can be **absolute** (i.e., the exclusion is without qualification) or **hypothetical** (i.e., the person has the intention to exclude but only if a particular circumstance occurs, such as in the event of adultery).
- The act of the will can be **explicit** (i.e., formulated and expressed in precise and definitive terms) or **implicit** (i.e., expressed but only indirectly, for instance in an attitude which is hostile to Church teaching on marriage).
- The intention to simulate must be more than **habitual** (i.e., something which formed part of a person's upbringing and/or thought patterns but which has not been really formulated, in other words some firm and ongoing inclination which remains an intellectual preference)
- The intention to simulate must be more than **interpretative** (i.e., the intention the person would have had if he/she had stopped to think about it, in other words what would have been intended).

**FUTURE CONDITION Canon 1102, §1 A marriage subject to a condition about the future cannot be contracted validly.**

To enter a valid marriage, a person must have no reservation or future condition. The spouses are required to give total and free consent to marry one another. If a person enters marriage while waiting to see if in the future a certain condition will be fulfilled or not (e.g., that one's spouse will change religions in the future, or enter a certain profession, or will bear a child) the marriage was invalid. This ground can be considered if one or both of the spouses entered marriage with an expressed condition based on some event in the future.

*Did either you or your former spouse attach any condition concerning the future of your marriage (for instance, "I will marry you on the condition that ... we will always live in this area; you will complete your medical degree; you will become a Catholic; we will have a child together")? Did you sign a pre-nuptial agreement, thinking that divorce was an option if a future condition was not met? If yes to either question, would the marriage have been called off if the other spouse did not agree to the condition? Did the condition remain unfulfilled, and if so, did this lead to the final separation or divorce?*

**PAST CONDITION Canon 1102, §2 A marriage entered into subject to a condition about the past or the present is valid or not insofar as that which is subject to the condition exists or not.**

To enter a valid marriage, a person must give free and unconditional consent. A past condition concerns the existence or non-existence of a fact, typically concerning the spouse's past. Placing such a past condition on the marriage raises serious questions, and it invalidates marriage when it is proven that the condition, upon which the marriage decision depended, was not fulfilled at the time of marriage. This ground may be considered when one or both spouses entered the marriage with an expressed condition based on something from the past.

*Did either you or your former spouse attach any condition concerning the past to your marriage (for instance, "I will marry you on the condition that ... you were never married before; you have finished college; you were never in jail; you never abused drugs before")? Did you sign a prenuptial agreement or any other document regarding a past condition? Would the marriage have been called off if the condition weren't fulfilled? Did the condition remain unfulfilled, and if so, was this a reason for the separation?*

**PRESENT CONDITION (Canon 1102, §2)**

To enter a valid marriage, a person must give free and unconditional consent. A present condition concerns the existence or non-existence of a fact or circumstance in the present time (e.g., pregnancy, a medical condition, career, a character or trait). Placing such a condition on marriage raises serious questions, and it invalidates marriage when it is proven that the condition, upon which the marriage decision depended, was not fulfilled at the time the marriage was entered. This ground may be considered when one or both spouses entered the marriage with an expressed condition based on something present or absent at the time of the wedding.

*Did either you or your former spouse attach any condition concerning the present to your marriage (for example, "I will marry you on the condition that ... you do not have a sexually-transmitted disease; you are the father/mother of my child; you are a virgin; you do not abuse drugs or alcohol; you are free of debt")? Did you sign a pre-nuptial agreement or any other document regarding this condition for marriage? Would the marriage have been called off if the condition had been discovered to be unmet or false? Did the condition remain unfulfilled, and if so, was that the reason for separation or divorce?*

• **Proofs Required for a Case of Conditioned Consent**

- Proof of a positive act of the will (explicit or implicit, virtual or actual) placing the condition before the marriage. This proof is found in the person's words and actions, as well as through the testimony of witnesses;
- Motive for placing the condition;
- The importance of what has been conditioned;
- Doubt concerning the existence or not of what was conditioned. Normally, the fact of positing a condition arises from at least an initial doubt that the condition will be fulfilled. If the person believes

- that the condition will be fulfilled, then the doubt is resolved (even if erroneously), but the act of the will placing the condition still virtually exists.
- Attestation that the condition was never revoked;
- Reaction of the person upon discovering the fulfillment or non-fulfillment of the condition.

**FORCE OR FEAR** *(Canon 1103 A marriage is invalid if entered into because of force or grave fear from without, even if unintentionally inflicted, so that a person is compelled to choose marriage in order to be free from it.*

A person must freely choose to enter marriage or the marriage is invalid. Force is a grave threat from outside the person, and may be inflicted intentionally or unintentionally, even by a well-meaning person. Fear is the internal result of the external force. It must be both grave and compelling, so that the person chooses to marry to escape from the force and fear. This ground may be considered if one or both spouses entered marriage in order to be free of some external force or some internal fear which was related to the marriage decision. The choice, then, was not so much to enter marriage, but to be free of the external force or the internal fear of the moment.

*Were either you or your spouse forced or pressured in any way to enter this marriage? Was the marriage someone else's idea, and not yours or your former spouse's? Did either of you feel that you had no real choice whether to marry the other? Were either you or your former spouse deeply afraid that NOT marrying would bring about a serious harm or threat? Was there, in fact, a threat in not marrying? Was there someone or something threatening harm or punishment if you did not marry one another? (Force or threats could come from parents, family, employer, church, cultural expectations, etc.)*

**REVERENTIAL FEAR** *(Canon 1103)*

The choice to enter marriage must be made knowingly and freely, or the marriage is invalid. If one or both of the spouses chose to enter marriage principally because of a grave fear of displeasing a person who was an important authority figure, this ground could be used. As in the ground above, reverential fear is an internal emotion which arises from some external force. The external force may have been a strong suggestion (or a command) to enter marriage or an expression of disapproval over an alternative to marriage. Acting under reverential fear, then, one chooses to marry because failure to do so would greatly displease a person or ideology which is subjectively important.

*Were either you or your former spouse forced or pressured to enter this marriage by someone important in your life (for example, parents, clergy, relatives, a teacher)? If yes, was the marriage this person's idea and not yours or your former spouse's? Was someone making marriage a condition for something else (for instance, an inheritance, a job, or baptism of your child)? At the time of the marriage, were either of you dependent on parents or others to make major decisions, and if so, was the marriage really decided by parents or another significant person? Was this marriage arranged by your parents or relatives, and not your choice? Do you think the marriage would not have occurred if someone important to either of you had not insisted on marriage? Did either of you actually want to call off the marriage, but felt pressured to go through with it anyway (for example, by a parent saying, "All the arrangements are made and I insist that you go through with your plans")?*

● **Proofs Required for a Case of Force or Fear**

- Certainty of the threat that the person feels;
- Gravity of the threat and the resultant fear;
- Evidence that the only way to escape the fear is by marrying at this time;
- Aversion that the party who was forced to marry feels for the spouse, or at least feels toward this particular marriage at this time.
  - Aversion need not amount to a physical repugnance of the other person, but it would suffice that the person be adverse not specifically to the other person but to marriage with that person. The aversion must have been present at the time of the marriage. This could be presumed if there are signs of aversion, such as for example, crying, untypical lack of communication, disinterest in the wedding arrangements, denial of signs of affection, both before and after the marriage, etc.

## INVALID CONVALIDATION

When a Catholic person or couple seeks to have an invalid marriage recognized by the Church, it is accomplished only through a new marriage within the Church. Each party must make a totally new decision and a new act of consent. They must understand that they are beginning their sacramental marriage, not “blessing” the existing invalid marriage. This ground applies if one or both spouses were Catholic, first entered an invalid marriage not recognized by the Church, and later had that marriage convalidated in the Catholic Church. This ground can be considered if the convalidation was not done freely and knowingly, or if the spouses did not intend to enter a new sacramental marriage at that time, but saw the convalidation merely as a continuation of the existing invalid marriage.

*At the time you married your former spouse, were either of you Catholic? Did the marriage first occur “outside the Catholic Church”, that is, not according to the laws of the Church? If so, was it later convalidated or “blessed” in the Catholic Church? Was there a specific reason for the marriage to be validated (for example, the baptism of a child, illness of a family member, etc.)? Were there serious marital problems before the convalidation occurred, and if so, did either you or your former spouse believe that the validation or “blessing” would help solve those problems? When the marriage was validated or “blessed”, did you or your former spouse believe that it was simply a type of “renewal” of your earlier marriage vows? Did either of you think that the validation was simply a ceremony to go through, and not a new commitment to marriage? Did either of you think that the civil marriage was your “real” marriage, and the validation was just a formality? Did you continue to celebrate your anniversary on the date of your original marriage outside of the church?*

