

# **MARRIAGE NULLITY WORKSHOP**

## **ELEVEN GROUNDS OF NULLITY: A SHORT EXPLANATION**

**Canon 1095, 2°: Grave Defect of Discretion of Judgment** To enter a valid marriage, a person must have sound reason and mature judgment concerning the essential rights and duties of marriage (being faithful, being in a sexual relationship with your partner, openness to having children, permanently committing to marriage, respecting your partner). The decision to marry must also be free and the result of reflection that is appropriate for a decision as serious as marriage itself. If one or both spouses either lacked sufficient knowledge of marriage or of one another, or if they failed to exercise mature judgment in choosing to marry, the grounds of grave defect of discretion of judgment may apply. Canon 1095, 2° may relate to the following situations:

- the parties had very little or no dating experience before becoming engaged
- one or both was on the rebound from a broken engagement or previous marriage
- one or both saw marriage simply as "the next step" without seriously considering the commitment involved
- the dating period and courtship were very brief
- one party had just lost his/her spouse and thought they found another person just like the one who died and so they married right away
- the marriage took place because of a pre-marital pregnancy
- one or both married to escape a difficult home situation
- the marriage took place after ignoring the serious doubts/concerns of family or friends.

**Canon 1095, 3°: Psychological Incapacity** To enter a valid marriage, a person must have the psychological ability to take on and to live out the lifetime obligations of marriage. These obligations are related to fidelity, permanence, openness to children, and marriage as a conjugal partnership. A person cannot consent to something that is beyond their psychological ability. 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 them from assuming the obligations of marriage, the marriage is invalid. There must be proof of the condition, and a psychological expert is required. Examples of serious psychological disorders are bi-polar disorder, obsessive-compulsive personality disorder, and posttraumatic stress disorder. Cases judged on this ground may involve:

- diagnosis of a serious psychological illness
- alcoholism or chemical dependency
- anorexia
- pathological gambling
- serious sexual disorders
- homosexuality

**Chemical dependency/alcoholism** is considered under Canon 1095.3°, inability to assume the essential obligations of marriage due to psychological causes. Alcoholism is defined as a chronic disease or behavioral disorder manifested by dependence upon alcohol and by repeated drinking in excess of the dietary and social uses of the community and to an extent that interferes with the person's health, interpersonal relationships, and economic functions. Alcohol or drug dependency demonstrates three criteria: 1) a pattern of pathological use, 2) impairment in social or occupational functioning, and 3) either tolerance or withdrawal. The three areas that are investigated are severity, antecedence, and incurability.

In other words, was the abuse of alcohol seriously disruptive of marital life? Was abuse of alcohol present at the time of the wedding? Was professional intervention such as treatment or participation in AA necessary for the person to stop drinking?

**Canon 1096: Ignorance of the Nature of Marriage** To enter a valid marriage, an individual must have some basic knowledge of what marriage is all about. A person must know that marriage is a permanent partnership between a man and a woman, and that marriage by its nature involves openness to children by means of sexual cooperation between the spouses. This is a very difficult ground to prove. However, this ground may apply

- if one or both parties grew up in an extremely sheltered home
- if they had no role models for a happy and healthy marriage
- if they were ignorant about the basics of sexuality
- if they were raised in a sexually repressed environment
- if one or both parties was developmentally disabled and lacked the basic knowledge of what marriage involves.

**Canon 1097, §2: Error about a Quality of a Person** To enter a valid marriage, individuals must know the essential qualities of the person they are marrying. This ground may be considered when, at the time of marriage, one spouse was mistaken about a quality directly intended in the other spouse (almost as a condition for marriage). This ground may apply if one party 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 the marriage was the belief that the intended spouse possessed that quality. The intended quality must be of such a level of importance that without it, the spouse would not have married the other person.

**Canon 1098: Fraud or deceit** One who enters marriage deceived by fraud, which is carried out to obtain the marital consent of the other person, marries invalidly. Fraud is the intentional act of deception. It can be committed by the other spouse or by a third party, but the end result is the same: one of the parties consents because they were deceived into doing so. In cases involving fraud, there is an intentional misrepresenting or concealing of information that is necessary for a person to make a well-informed marital decision. The purpose of the deception is to get the other person's agreement to marry. When the deceit is discovered, there is an immediate effect on the marriage relationship, usually separation or divorce. The object of the fraud is something that would seriously harm the marital relationship. Examples of fraud would be:

- concealing the fact that one had been married before
- concealing one's homosexuality
- deceiving one's partner into thinking that a premarital pregnancy was the result of the parties' sexual relations when in fact it came about from a sexual encounter with someone else.

**Canon 1099: Error of Law or Determining Error** For a marriage to be valid, both spouses must know that marriage requires complete fidelity to one another. If one or both spouses entered marriage with an erroneous belief that infidelity, polygamy or polyandry was possible, this ground can 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. Cases based on this ground may include evidence that shows that one or both spouses firmly believed it was acceptable to have other sexual partners after marriage, or that "open" marriage was acceptable.

For marriage to be valid, both spouses must know that marriage is an indissoluble/permanent relationship. 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 can 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, so 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. Cases judged on this ground may include evidence that shows:

- family backgrounds of multiple divorce and remarriage
- family attitudes of acceptability of divorce
- the belief of one or both spouses that the marriage would not be permanent
- the signing of pre-nuptial agreements based upon the understanding that marriage is not permanent
- the acceptability of "trial" marriage
- the belief that the parties have a right to divorce and remarry at will.

**Canon 1101, §2: Simulation – either Total or Partial (Five options with this ground)**

If one or both parties through a positive act of the will excludes marriage itself, or some essential element or property of marriage, it is invalidly contracted. This ground may be explored as either a total exclusion, or partial exclusion of elements (good of the spouses, fidelity, children or permanence). Simulation takes place when one intends to go through a wedding ceremony but does not intend to marry according to the Church's understanding of marriage. The Tribunal looks for a confession of simulation. If there is no confession, simulation can be proven by the person's behavior. In cases judged on this ground, the Tribunal examines the evidence for the presence or absence of respect, companionship, friendship, and sensitivity.

- ❖ **Exclusion of the Good of the Spouses:** The good of the spouses refers to personal dignity, fundamental human rights, and physical, moral, spiritual, sexual and psychological integrity. The good of the spouses takes in the interpersonal communion and partnership of the marriage covenant, a partnership that recognizes the equal dignity of the other person. To prove an intention against the good of the spouses, it must be clear that the person did not intend to build an intimate community of life and love with the welfare of both spouse and children in mind; that there was a lack of concern for the physical, emotional, intellectual and spiritual welfare of the other; in short, that there was not an intention to provide partnership, benevolence, companionship, friendship and caring to one's partner. Cases judged on this ground may include:
  - a pattern of abusive behavior
  - financial irresponsibility
  - absence from the home
  - disregard for the individuality and personal rights of one's partner.
- ❖ **Exclusion of the Good of Fidelity:** The good of fidelity, in the broad sense, is trust, loyalty and support that spouses owe each other. In the strict sense, it is sexual fidelity – having one's spouse as one's only sexual partner. One who marries gives up the right to have another spouse, as well as the right to have another sexual partner. Fidelity means giving to one's spouse the perpetual and exclusive right to sexual relations, and accepting the corresponding obligation. The Tribunal

examines the credibility of the person, his or her behavior, his or her attitudes and words prior to and soon after the wedding.

- ❖ **Exclusion of the Good of Indissolubility:** Indissolubility (permanence) must be intended in marriage consent since there is no marriage without this property. If one person intentionally decides to enter something less than an indissoluble marriage, that intention stands in direct contradiction to the nature of the marriage covenant. One cannot at the same time intend to enter an indissoluble marriage and a marriage that can be dissolved. Generally the exclusion of indissolubility is phrased hypothetically, as in "I plan to remain married for life if the marriage turns out to be a happy one." Even a hypothetical intention is enough to make the marriage invalid.
  
- ❖ **Exclusion of the Good of Children:** There are two distinct aspects under this intention. One is the intention to exclude the conjugal act; the other is the intention to exclude the effect of this act, that is, children. The right to the conjugal act binds at all reasonable times. The use of this right is not required when the duties of responsible parenthood indicate otherwise. The right to the conjugal act includes the obligation of not preventing procreation. If one party intended to have intercourse but also intended to always use artificial contraception or to practice abortion then that party would be marrying invalidly. The restriction of the right to infertile periods exclusively would invalidate the consent, but a decision by both spouses after the marriage to limit the use of this right to such periods, for the purpose of responsible parenthood, would not invalidate the marriage. If a couple marries with the intention to postpone children, that intention does not make the marriage invalid. But when the intention of one or both parties is not to have children for an initial period of the marriage is very strong and inflexible, it may exclude the right to children.
  
- ❖ **Total Exclusion of Marriage Itself:** In cases involving this ground, the person knowingly and willingly intends to enter an "imitation marriage" while excluding marriage itself. The Tribunal asks, "Why did the party want to go through the wedding ceremony? Why did the party not want marriage itself?" Examples of total simulation would be:
  - going through a wedding only for the civil and social effects of making a child already conceived legitimate in the eyes of the law
  - marrying only for money
  - marrying to obtain a passport or residence status in a country
  - marrying merely for convenience for work or social purposes
  - marrying to avoid civil prosecution for illicit sexual acts
  - marrying to receive taxation benefits
  - marrying to avoid the military draft
  - marrying to inherit an estate or title.