

## WHAT ARE GROUNDS FOR ANNULMENT? by Jim Blackburn / Catholic Answers / January 1, 2016

When a couple exchanges nuptial consent, either a valid marriage comes into existence at that moment or it does not. If it does not, it is because something necessary for a valid marriage is lacking. Some of these necessities are based in natural law; the Church's authority imposes others. Either way, if even one thing is lacking, a marriage will be declared null.

Catholic canon law generally recognizes three areas in which a wedding may fail to bring about a valid marriage: lack of capacity, lack of consent, and lack of form. We will take a brief look at all three areas and point out some of the more common practical grounds a marriage tribunal may declare a marriage to be null. Of course, this is not an exhaustive treatment of the subject but it might be helpful for understanding annulments in the Catholic Church.

### **Lack of Capacity**

In order for a party to validly marry, he must first be *capable* of marriage. If he is lacking anything that is required for him to be capable of marriage, then a wedding will not result in a valid marriage and, thus, there will be grounds for annulment. Such capacity is required on the part of both parties attempting marriage. In either the case of one or of both parties lacking the capacity to marry, a valid marriage cannot come into existence between the two.

The *Code of Canon Law* identifies many possible impediments to a party's or a couple's capacity to marry. Some are obvious. For example, a party who is already married is not capable of marrying a second spouse. Similarly, active bishops, priests, and deacons, as well as those in religious vows of celibacy, are incapable of entering into new marriages.

Other such impediments are not as obvious. Insufficient age (usually sixteen for a man or fourteen for a woman) impedes a valid marriage from coming into existence. Also, since marriage is partly about procreation, preexisting and permanent impotence renders a party incapable of marriage. (Impotence is the inability to complete a conjugal act. This is not the same thing as sterility, which, of itself, does not impede a marriage.)

Parties too closely related are incapable of marrying each other. Such relatives ordinarily include relationships as close as first cousins and uncles/nieces, as well as any direct-line relationships (grandfathers/granddaughters, etc.).

Any of these factors may constitute grounds for nullity due to lack of capacity. Additionally, a party who is simply incapable of consenting to a marriage is incapable of validly entering into one. For example, if a party lacks sufficient use of reason or suffers from a serious psychological disorder, he may be incapable of consenting to marriage.

### **Lack of Consent**

Since marriage may be entered into only willingly, for a marriage to be valid, a capable man and a capable woman each must *consent* to it. This implies that they must each possess a sufficient understanding of what it is that they are consenting to. If a party's understanding of marriage is radically different from the Church's understanding of marriage, he does not consent to a valid marriage in the eyes of the Church.

For example, the Church's understanding of marriage includes the fact that marriage is a lifelong union ordered toward procreation. If a party does not have at least a similar basic understanding

of marriage, he does not enter into marriage validly. But even when a party does possess a sufficient understanding of marriage, if he intentionally excludes an essential property or an essential element of marriage, he does not sufficiently consent to it.

The essential *properties* of marriage are unity and indissolubility. Unity means that the marriage is an exclusive relationship between one husband and one wife. Indissolubility means that it is a lifelong commitment between the two. Entering into marriage without the intention of fidelity excludes unity and therefore invalidates the marriage. Similarly, a party who weds with the understanding that he can always get a divorce (understood to dissolve the marriage) if things don't work out does not sufficiently consent to marriage. Exclusion of either essential property of marriage is grounds for annulment.

The essential *elements* of marriage include (among other things) its being ordered toward the procreation and education of children. A party who weds with the intent to always exclude from the relationship its ordering toward procreation invalidly marries. This doesn't mean that the spouses cannot ever choose to regulate procreation (through moral means; see *Catechism of the Catholic Church* 2368) in order to space the births of their children, but it does mean that the certain willful exclusion of procreation altogether does.

In the case of sterility (not impotence), a marriage may still be ordered toward procreation if the spouses do not willfully exclude the right to potentially procreative acts, even though it is known in advance that the couple is infertile. Additionally, the education of any offspring resulting from the marriage must not be excluded. Such education includes the religious education of the children. Therefore, the intention to positively exclude the religious education of offspring invalidates a marriage.

Since each party must freely consent to marriage, anyone forced into a marriage does not enter into it with sufficient consent. Thus, a true "shotgun wedding" does not result in a valid marriage. Fear that impedes a party's judgment may also be sufficient to invalidate a marriage. For example, this might happen in the case of out-of-wedlock pregnancy, especially involving a very young couple.

So far we have addressed some ways in which a lack of capacity or a lack of consent may constitute grounds for annulment. These areas are not entirely unique to the Catholic Church, although some of their specific parameters might be (for example, the ages at which a man and a woman may marry). The third area in which a wedding may fail to bring about a valid marriage much more specifically concerns Catholics and non-Catholics wishing to marry Catholics. Other churches and communities may impose their own requirements concerning the method and manner in which marital consent is to be exchanged, but it is the Catholic canonical form by which marriages involving even only one Catholic are governed. Unfortunately, it is an area that is misunderstood by many today.

### **Lack of Form**

When a Catholic party gets married, he ordinarily must have a Catholic wedding ceremony in order for his marriage to be valid. This usually entails a marriage contracted before a priest or deacon in the presence of two witnesses. Once a person is a Catholic, he remains bound by the Church's *form* of marriage even if he later falls away from the Church.

The *Code of Canon Law* states, "The form...must be observed if at least one of the parties contracting the marriage was baptized in the Catholic Church or received into it" (can. 1117). The

Church's God-given authority imposes this law—Jesus gave the Church the authority to enact such laws that bind her citizens (see Matthew 16:18, 18:18). Thus, a Catholic ordinarily must observe canonical form in order for his marriage to be valid.

If a Catholic wishes to validly marry any other way (for example, observing his fiancé's Protestant form), he must obtain a dispensation from the Catholic canonical form from his bishop. (This is ordinarily handled through his local pastor.) If he fails to obtain a dispensation and proceeds with a wedding apart from the Church, his wedding lacks canonical form and his marriage is not valid. Lack of canonical form constitutes grounds for annulment.

(Note: An exception to this exists in the case of a Catholic marrying a non-Catholic Christian of an Eastern rite, such as an Eastern Orthodox Christian, in that party's church's setting. In such a case, failure to obtain a dispensation is illicit but not invalidating of the marriage.)

Additionally, if a Catholic wishes to marry a non-Christian, he must first obtain a dispensation from his bishop in order for his marriage to be valid. To receive such a dispensation, the Catholic party must declare that he is prepared to remove dangers of defecting from the Catholic Faith and he must sincerely promise to do all that is in his power to raise offspring resulting from the marriage in the Catholic Church.

The non-Christian spouse must be informed of the Catholic party's obligations and promises in this regard, and both parties must be instructed about the essentials of marriage that cannot be excluded. Failure of the Catholic party to obtain a dispensation from his bishop before entering into such a marriage impedes a valid marriage from coming into existence. As such, it constitutes grounds for annulment.

### **Grounds in General**

It is important to note that grounds for annulment, if any, are present at the time consent is exchanged on the wedding day. Similar factors that show up later in the marriage do not, of themselves, constitute grounds for annulment. Indeed, a spouse who intends on the wedding day to always be a faithful spouse might change his mind later on. So a spouse's infidelity years into the marriage does not necessarily mean that the marriage is null.

On the other hand, unfaithfulness at any point in the marriage might be considered by the marriage tribunal to be evidence of a spouse's exclusion of the element of unity at the time the marriage was contracted. Such matters are for the sole determination of the tribunal.

A party seeking an annulment is not obliged to determine precisely which grounds impeded a valid marriage from coming into existence. He can and should cooperate with the marriage tribunal's questions and remember that the ultimate determination of grounds for annulment rests with the Church. While there may be multiple grounds that could be considered, determination of a single invalidating factor is all that is necessary for a declaration of nullity.

Grounds may be applicable to only one party, but that is all it takes to declare a marriage null. Indeed, a marriage tribunal may find a single factor that can be quickly and easily ruled on and, therefore, not consider any other factors. For example, in the case of a lack of form, an abbreviated documentary process is often applied.

Finally, in some cases, no grounds for annulment will be found, even after appeals have been exhausted. In such cases it is crucial to keep in mind that the authority to make a determination of

nullity rests solely with the Church. The Church has stressed that the “internal forum” is not sufficient for the determination of nullity. Civil divorce might be necessary for the protection and care of the spouses and their children (see the *Catechism*, nos. 2382-2386), but, unless the Church declares that marriage null, its validity must be upheld. Faithful followers of Christ must heed Jesus’ words, “What therefore God has joined together, let not man put asunder” (Matt. 19:6).