

# ***UNDERSTANDING ANNULMENTS***

*Can you earn them, buy them, block them?*

*Many well-meaning Catholics puzzle over the process of annulment.*

*Here are some answers.*

By John T. Catoir, J.C.D.

MY HEART GOES OUT to the many people who have suffered the tragic breakup of their marriage. I would advise anyone in such a situation not to be afraid of the Church's rules and regulations. Guidelines exist for the good of society, but we realize that individuals are saved one by one. Sometimes the general rules set up to achieve justice fall short of the target.

The late Bishop Fulton Sheen explained that there are two kinds of truth: "An outer truth is one we master, for example, the distance of the sun from the earth. An inner truth is one that masters us, for example, God is merciful to the penitent. Outer truths of physics and chemistry come to us without desire, sorrow, pity or emotion. Inner truths carry some emotions with them and influence behavior."

I received my doctorate in canon law in 1964 and have worked for the marriage tribunal of the Diocese of Paterson, New Jersey, for many years. I was in charge of it for nearly 10 years and now serve part-time as a presiding judge on the court of second instance (roughly similar to a civil court of appeals).

Over the years I have been asked hundreds of questions concerning annulments in the Catholic Church, but here I will answer those most frequently asked.

## ***Why Is the Church So Strict About Marriage?***

The Roman Catholic Church teaches that a new marriage cannot be initiated while a previous marriage still exists.

Whether or not you agree with the Catholic Church's teaching, at least know that it is based on a time-honored interpretation of the words of Jesus, "What God

has joined together, no human being must separate" (Matthew 19:6).

A civil divorce puts a marriage asunder and bestows the right to remarry. The Church does not acknowledge the right of civil authorities to dispense from vows taken in church.

Divorce has become commonplace in all walks of society, even in marriages where there are children. Some parents put their own happiness before the good of the children. Others are more conscientious and terminate their marriage to save the children from a dysfunctional family situation. In either case the children suffer. The Church tries to minimize this suffering.

Divorce contributes to as many as three out of every four teen suicides and four out of five psychiatric admissions. The children of divorce are much more likely to drop out of school, have premarital sex and become pregnant outside of marriage than youngsters in intact families.

Young adults from ages 18 to 22 who are from divorced families are twice as likely to have poor relationships with their parents. They show higher levels of emotional distress as young adults than those from intact families.

Our culture has so trivialized sexuality in the last 30 years the divorce rate has doubled, and the number of divorced adults has quadrupled.

This does not mean that all divorcees are bad people, not at all. Many of them are saints-in-training who gave more than 100 percent to make their marriages work. Sadly that effort was not enough because, as everyone knows, it takes two to tango.

It should be noted that divorced Catholics are not excommunicated from the

Church. They are considered Catholics in good standing and they have the right to receive Holy Communion as long as they have not entered an uncanonical marriage.

The only way a divorced Catholic can remarry lawfully in the Church is by obtaining a Church annulment.

***What Is a Church Annulment?*** An ecclesiastic annulment is a declaration by the Church that a marriage which was thought to be valid was not legally binding. This might be because of some defect in the consent given on the day of the wedding, or possibly a defect in the psychological capacity of one of the parties.

When an annulment is granted, the Church is not saying that there never was a marriage. The union certainly was a sociological fact, and the memory of it may even be cherished, but the legal contract on which it was based turned out to be invalid.

Canon law declares that all the children born of an annulled marriage are legitimate. The unfortunate designation "illegitimate" is hardly used anymore, but it is technically reserved for those born out of wedlock, which is certainly not the case in an annulled marriage.

When a doubt about the validity of a marriage arises, you have to present your petition to the tribunal in the diocese where you are living, or where the marriage took place. Your local pastor can help you make contact with the appropriate tribunal.

If you need help identifying grounds, the tribunal may assign an advocate to help you. There are priests, laymen and laywomen who are trained to perform this task. You have the right to go to any canon lawyer of your choice to help you with your petition. It is best to find someone in your area.

If you have witnesses to support your allegations, the tribunal will probably accept your case for trial. About 20 percent of the cases presented never come to trial because of

insufficient grounds or a lack of evidence. This prescreening process explains in part the high percentage of affirmative decisions. Tribunals only take the cases that have a good chance of succeeding.

The Church's judicial system is human and, therefore, imperfect. We attempt to bring compassion to each situation in our search for the truth, but it may not always look that way. In order to help people resolve their doubts about the validity of their marriages, we have to collect the evidence and conduct a trial. This can be irksome.

This is not a trial by jury, but a trial by tribunal, which is the same system that is used in a military court of justice. Usually three priest-judges form the tribunal, and they decide the case by majority decision. When there is a shortage of judges, one priest-judge may preside.

If an annulment is granted by the court of first instance, it must be upheld by an appeals court in another diocese (the court of second instance). You need two concurring affirmative decisions before the annulment is final. If there is a split decision between the two lower courts, the case must go to the Roman Rota for a final resolution.

### ***What Are the Usual Grounds for an Annulment?***

The grounds most frequently presented to the courts are as follows:

1) A lack of due discretion. For example, suppose a woman has married her deadbeat husband because she was pregnant. He refuses to go to work, sitting around the house drinking beer all day while she supports the family with an outside job. She does all the shopping, cooking and childcare. After a few years she decides she has had enough and begins divorce proceedings.

Someone advises her to approach the marriage tribunal for an annulment, alleging that she married in haste. In other words, she lacked the discretion necessary to spot his personality disorder. Her husband promised to take care of his family, but clearly he did not have the character or the desire to do so. She claims that if she had known what kind of a misfit he really was she never would have married him.

If she can prove that he behaved this way, the tribunal will probably grant her an annulment.

- 2) Defective consent. If, on the day of the wedding, one of the parties lies about an essential property of the marriage, it amounts to fraud going to the heart of the contract.

The Church will marry a couple only if both parties intend to enter an exclusive union, which is open to the possibility of procreation. If one party deceives the other substantially, a serious fraud has been committed.

For example, take the case of a woman who promised to enter into an exclusive union, but kept a lover before, during and after the marriage. If you can prove it, the judges will annul the marriage because she never intended an exclusive union. This is more than weakness or infidelity; it is fraud.

To avoid collusion between a husband and a wife in presenting a made-up story just to get a Church annulment, we have a defender of the bond to uphold the validity of the marriage against all challenges. This officer of the court argues against the granting of an annulment unless it is an obviously deserving case.

- 3) Psychic incapacity. If a person is incapable of fulfilling the burdens and obligations of marriage, the marriage can be annulled. You cannot make a promise to do something you are incapable of doing. For instance, a paranoid schizophrenic may have behaved normally at the time of the

wedding, but later, when the illness becomes full-blown, the marriage falls apart.

It is only because of our new knowledge in the field of psychology that we have come to understand that a latent condition can affect the consent retroactively. Some of these cases involve persons who are psychotic, but not all. A serious neurosis can also affect the capacity to marry.

These cases are becoming more common. Neil Clark Warren, a psychologist and marriage counselor, estimates that in 75 percent of all divorces at least one party is emotionally unhealthy. In countries where there is a vigorous drug subculture, Warren's claim is not an exaggeration.

Forty years ago people were told, "You made your bed, now lie in it." This is too simplistic a rule when it comes to mental or emotional illness. We learned this new jurisprudence from the Sacred Roman Rota. Decisions of the Rota are only made available (with names deleted) 10 years after they are issued.

When I was the judicial vicar in the Diocese of Paterson in the early 70's, I began reading the decisions of the Roman Rota on a regular basis and was amazed to find that they were granting annulments to people who were extremely immature. I also found that the Rota had been granting annulments in cases involving psychotics and neurotics as well. The American Church was 10 years behind in its jurisprudence.

- 4) Informal cases (prior bond and defect of form). Annulments are given in other less complicated cases where it is not necessary to go to trial. For instance, if it is discovered that a man was validly married to someone else before he married the petitioner, but lied to his wife, the second marriage will be nullified on the grounds of ligamen, which is Latin for a "prior bond." These cases are settled rather quickly in an administrative process which involves little more than documentary evidence.

The same type of administrative process is used when Catholics marry outside the Church. This is called a declaration of nullity based on a "defect of form." The couple did not exchange vows before a priest and two witnesses in a Catholic church as is required by canon law. When Catholics fail to observe this law, the marriage is invalid. These "defect of form" cases account for more than half of all the annulments granted in the Catholic Church.

### ***How Much Does an Annulment Cost?***

If you are really poor, it costs nothing. If you have limited means, you pay as much of the fee as you can. If you have means, you pay the full tribunal fee which (in Cleveland is \$450; half the actual expense of processing a case).

There is a lot of misunderstanding when it comes to annulment fees. Some people say that you can buy an annulment in the Church. If that were true, which it is not, why do we have

such an elaborate scheme to thwart any form of corruption? You would have to bribe six different judges in two different dioceses and any one of them could throw the case out in a second. Daring to tamper with the justice system is a crime in the Church as well as the state.

The American tribunal system ended up \$14,000,000 in the red last year. It is not now and never was a money-making proposition, but many times I have heard people spreading the rumor that they did not get their annulment because they were not willing to pay the huge fees involved. More likely than not, their case was rejected because they did not have any credible evidence to support it. Tribunal fees are minimal compared to civil divorce fees.

Once an annulment is obtained, both parties to the marriage are free to remarry in the Catholic Church. The person who is the culpable cause of the invalidity, however, such as the woman with the lover, may not be allowed to remarry in the Church unless she has reformed her life. This would have to be verified through counseling or some other means.

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## ***What About the Rights of the Respondent?***

By Sister Victoria Vondenberger, R.S.M., J.C.L.

THE WHOLE PROCESS of investigating a marriage is designed to find the truth, not to prove one party right and the other wrong. Every marriage involves two people, and hearing from the respondent greatly helps the tribunal (Church court) process of seeking the truth about a marriage.

Tribunal judges do not "annul" a marriage. Rather, the judges declare that the marriage in question was null from the beginning—that something essential was missing from the moment of consent which prevented this union from becoming one that is binding for life. In the case of the baptized,

something was missing that prevented this union from becoming a sacrament.

Consent makes marriage, so the tribunal judges must find out whether both parties consented to marriage as the Church understands it. Canon #1055 describes marriage as a covenant by which a man and a woman establish a partnership of the whole of life. This relationship is, by its nature, designed for the good of the spouses as well as the procreation and education of children.

### ***Right of Defense?***

Two people are radically affected by each marriage case presented to a Church tribunal. It is essential that the rights of the respondent, the "other party," be respected, as well as the petitioner's.

In his address to the Roman Rota on January 26, 1989, Pope John Paul II reminded all judges in the Church that the respondent's right of defense must be safeguarded. The pope specifically said a tribunal decision is invalid if either party is denied the right of defense (Canon #1620). A tribunal has the grave duty to make serious efforts to hear the respondent.

### ***Right to Know***

As a respondent, you have the right to know the validity of your marriage is being questioned. You should receive notice at the beginning of the process from a tribunal which is competent by law.

There are several ways a tribunal can be competent for a particular case. A marriage case can be heard in the diocese where the couple were married or in the diocese where the respondent resides. A case can only be heard in the place where the petitioner resides if the respondent also lives in the same conference of bishops (for most readers, that is the United States) and if the judicial vicar of the diocese of the respondent consents after being sure the respondent has been notified about the process.

In the external forum—the tribunal process—the petitioner is obligated to provide a current address for the respondent or to document reasonable efforts made to obtain that address. As the respondent, you have a right to know the marriage is being called into question and you have a right to offer your understanding of the facts about the marital relationship. You have a right to know what the petitioner and witnesses are saying about the marriage and about you. You have a right to know who those witnesses are and to offer additional witnesses, people who knew you or your former spouse firsthand. You also have a right to know the decision in the case and to accept it or challenge it by appeal.

As a respondent, you would not be notified about what is called internal forum but, before that would be considered, you should have been notified by a tribunal about an attempt by your former spouse to seek a declaration of nullity.

The internal forum is a moral remedy for an irregular marital situation available only after the external forum has been tried and cannot be completed. A tribunal might inform a petitioner that a decision cannot be reached because of lack of evidence, perhaps because vital witnesses are deceased.

The internal forum would require the following: a well-formed conscience, certainty that one is not rationalizing a preferred solution, no scandal, and moral certitude that the marriage is clearly invalid according to Church law. After an internal forum solution, one stands alone before God in this decision, taking full responsibility.

There can be no public blessing of an intended marriage because this is purely internal, not public. If one chooses to receive Eucharist, it is with full responsibility for doing so and with no Church approval. A priest assists the person in discerning that all the conditions are met but the decision rests with the person alone since there is no public Church decision through a tribunal.

## ***Right to Give Your Side***

Catholic or not, baptized or not, each party to a marriage has the right to state freely to the tribunal his or her knowledge of the situation and to present other proofs. A respondent cannot delay a decision unreasonably. The petitioner also has rights and one of those is the right to a timely decision. A respondent, however, will be given adequate time to reply.

Why would you want to be involved in an annulment case? You can present another perspective about the marriage, counter possibly skewed perceptions of the petitioner and help the tribunal better understand the relationship. Since the tribunal is seeking the truth about a particular marriage, every effort is made to hear from both spouses. If a marriage is declared null, it is null for both parties, so tribunal decisions affect respondents as well as petitioners.

As a respondent you have a right to know what is said about you and to explain yourself, your actions and your intentions. You do not need to participate in the process, but you have the right to do so. You also have the right to entrust your defense to the tribunal if you prefer to do that. In every marriage case there is always a defender of the bond whose canonical duty is to argue for the validity of the marriage from any facts that support that. The defender is also charged to be sure the rights of both parties are protected and that procedural law is respected. According to Church law, nothing said by a petitioner or a respondent has probative value (stands as proof) unless it is corroborated by documents or witnesses (Canon #1679).

## ***Right to Privacy***

There is a strict law of confidentiality in Church courts. Only the parties to the marriage and the tribunal officials have a right to know what is said by each party or the witnesses. There is some limitation about what information may be available to the parties. For example, you may be asked to sign a release from professional secrecy so that testimony may be obtained from a psychiatrist or psychologist whose evidence is offered in strict confidentiality to assist the tribunal judges. This restriction may differ because of civil law from one state to another.

No relatives or concerned friends may have access to any information. In fact, no one but the parties themselves or their properly appointed Church representatives may even be told about the progress of a case. The tribunal must balance the rights of the petitioner and those of the respondent, the public nature of marriage and the confidentiality of this process, the common good and the individual good, fidelity to law and pastoral attention to the individual person and situation.

A marriage involves two people. What is acceptable to one person may be intolerable to another. A psychic illness in one party may be so exacerbated by the other party that marriage is impossible while that same person in union with a different spouse may be able to achieve a partnership of life as a responsible spouse.

Ideally, the Church investigation of marriage cases will involve both spouses if they are willing to participate.

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**Check out the Archdiocese of Boston's ten part series on Annulments at: <http://www.rcab.org/marriage.html>**