

INVALID MARRIAGES

ANNULMENTS IN THE CATHOLIC CHURCH

Many people who are separated or divorced wonder “where they stand” with the Catholic Church. Sometimes single people thinking of marriage to a divorced person wonder about the possibility of marrying in the Church.

The Church, while upholding the permanence of a true Christian marriage, does reach out in support of people whose marriage has broken down.

What is marriage?

One view of marriage regards it as merely an agreement which can be broken at will by either party. The Catholic Church however, holds marriage to be the intimate union of life and love between a man and a woman, which is permanent, faithful and open to new life.

The Church maintains that when a man and woman, who are free according to law, exchange consent, the agreement made is presumed to be valid and binding. The couple is bound by a bond that only death can break. For this reason, the Church cannot accept that a civil divorce frees the parties to enter a marriage according to the rites of Catholic Church. Such freedom is only established if there is a Church declaration that the previous agreement was invalid.

What is an “annulment”?

A decree of nullity (annulment) is an official Church declaration which says that some of the necessary elements of a valid marriage agreement were missing at the time of the wedding. It frees the parties to enter a marriage according to the rites of the Catholic Church once all other requirements of law have been fulfilled. A decree of nullity does not mean that there was never any love between the parties or that they

lacked sincerity, effort or commitment. Nor does it mean that there was no “marriage” as generally understood by the community.

It simply declares that the bond of marriage, as understood by the Catholic Church, did not come into being because the agreement was invalid for some reason. In Australia, a decree of nullity has no effect in civil law.

What can make a marriage agreement invalid?

A number of factors can affect the binding force of a marriage agreement. For example, both civil and Church law require a minimum age. Church law also requires a valid consent and the capacity to live out the marriage commitment. Accordingly, the annulment process investigates matters such as the intentions of the parties, their maturity, and their freedom to act responsibly, their freedom from undue influence and pressures, as well as their capacity to undertake the essential obligations of marriage.

Anyone who wants to clarify their marital status in terms of the Catholic Church is welcome

How does the Tribunal function?

The Tribunal gathers the facts of the matter from the documents presented and oral evidence. The Tribunal needs to know about the background and upbringing of each of the parties, their courtship, the story of their marriage and the story since the marriage.

The Party seeking the decree of nullity gives evidence in a private interview with a member of the Tribunal staff.

Justice demands that the other party to the marriage is aware of the proceedings and is invited to take part in an interview that is conducted in the same manner. Every encouragement is given to both parties to participate as fully as possible.

Both parties to the marriage are invited to nominate witnesses who are willing and able to speak to the facts of the case. The witnesses are interviewed in the same manner as the parties to the marriage.

Is it now easier to get a decree of nullity (annulment)?

The factors that make a marriage agreement invalid have not changed. However, the insights of the human sciences over the past 50 years have broadened the basis on which Tribunal Judges can declare that a marriage agreement is invalid.

How is a decision reached?

When there is sufficient evidence gathered, the Tribunal Judges make a formal decision. The parties to the marriage do not attend the judgment session. Advocates may represent them if appropriate.

The Defender of the Bond, a Tribunal official, always submits observations which uphold the teachings of the Church on marriage.

The decision of the Judges at the local level (First Instance) declares either that the marriage agreement is invalid (an affirmative decision) or that the evidence does not allow such a decision to be made (a negative decision).

What happens in the First Instance Decision?

After an affirmative decision, the case is sent to the Appeal Tribunal for Australia and New Zealand.

If an affirmative decision is ratified, the marriage agreement is declared invalid and a decree of nullity issued. Otherwise the presumption remains that the marriage agreement is valid and binding.

Is it all worthwhile?

A negative decision can be appealed to the Second Instance at the request of either party to the marriage.

Is everyone who seeks an annulment successful?

No, not everyone is successful. The Judges decide each petition on the evidence presented to them. Fulfilling the requirements of the process does not guarantee an affirmative decision.

How long does the process take?

Sometimes it takes less than a year to complete, but at other times it may take longer. Couples shouldn't make arrangements for a marriage in the Catholic Church until the final decision has been given.

Who are the Tribunal Judges?

The Judges are priests, religious and lay people appointed to the Tribunal by the Archbishop of Brisbane. All have the necessary qualifications required by church or Canon Law.

Does a decree of nullity mean children of a marriage are illegitimate?

Definitely not. Church law affirms that children of a marriage are always regarded as legitimate.

What if a person has been married before?

Each of the unions is considered separately.

Are there any costs involved?

The Tribunal charges a small standard fee of 2% of the gross annual household wage. (usually equivalent to one week's wage), but financial difficulties are considered.

For most people it seems the answer is "yes". However, people are understandably disappointed when petitions are not successful. Although disappointed, many still value the opportunity to tell their story to people who have received them in a professional, sensitive and pastoral manner.

The granting of a decree of nullity clears the way for the parties to enter a marriage within the Catholic Church. For those who have already entered another union, a decree of nullity allows that union to be recognized by the Catholic Church.

Who can approach the Tribunal?

Anyone who wants to clarify their marital status in terms of the law of the Catholic Church is welcome to contact the Tribunal.

As well as the process of examining a marriage agreement presumed valid, there are various procedures which may be followed where either of the parties was not baptised, or where people were married contrary to the laws of the Catholic Church etc.

Recommended Reading

It is impossible simply and briefly to cover the breadth of this topic.

For further information, the Dove publication, "Marriage, Divorce and Nullity", by Bishop Geoffrey Robinson is excellent.

Bishop Robinson is a retired Bishop from the Archdiocese of Sydney and a world renowned Church lawyer. His book is extremely readable and would answer most queries. It is readily available at Catholic bookshops and Tribunal Offices.

The content of this pamphlet outlines the procedure followed in examining a marriage agreement presumed valid according to the laws of the Catholic Church. Other procedures may be followed where either the husband or wife was not baptized, or where people married contrary to the laws of the Catholic Church. Tribunal staff will help you in these matters.

If you would like to speak with someone, or would like some more information, you can contact the:

**Tribunal Secretary
Donna Mitchell PH 07 49313673**

**or write to:
Fr John Grace
Marriage Tribunal,
PO Box 611,
Rockhampton Qld 4700**