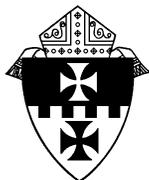


# Grounds for an Invalid Marriage

The covenant of marriage comes into existence by means of the valid exchange of marital consent (c. 1057). Most cases that come before the Tribunal are handled by way of a formal process, which examines whether or not the matrimonial consent of one or both of the parties was in some way defective. The grounds of nullity described in this brochure refer to the various issues that can be used to examine the defective consent of the parties. Grounds are the legal basis for requesting a formal judicial action for the purpose of examining the basis for the invalidity of a marriage.

Multiple grounds can be suggested in a *libellus*, that is, the petition which is requesting the tribunal's formal examination of the marriage; and such multiple grounds should be requested if the case warrants them. Further investigation conducted later in the proceedings may find that a ground which looked quite promising early in the proceedings cannot be substantiated by the evidence, but what seemed to be a less likely ground actually proved to be the basis for nullity.

What follows are some of the more common the grounds enunciated in the 1983 *Code of Canon Law* and used by the Tribunal in its examination of marriage cases presented to it.



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### **Lack of Sufficient Use of Reason**

If a party lacks the use of sufficient reason so as to not know or understand what he or she is doing at the time that marital consent is exchanged, then there is no true consent. In other words, those who do not have sufficient use of reason are incapable of entering marriage. This incapacity may be temporary or permanent. A number of causes can give rise to this incapacity; they range from psychotic states to temporary lack of reason arising from excessive use of alcohol or drugs; severe mental retardation can also deprive a person of sufficient use of reason. A person in such a situation is incapable of a human act which presupposes capacity, knowledge and free will. This ground is only used in the severest of cases because it calls into question the person's ability to ever enter into a valid marriage. Proving this ground often requires medical documentation regarding the manifestation of the illness.

### **Grave Defect of Discretion of Judgment**

If a party is not able to evaluate properly the marriage that he or she is undertaking, or if the decision to enter into marriage was not in accord with a well-reasoned decision, this party may have experienced a grave defect of discretion of judgment concerning the essential rights and duties of marriage that are to be mutually given and accepted at the time of marital consent (c. 1095, 2°). Even though this is a very common ground, and encompasses many different situations, such as psychological immaturity, unwanted pregnancy, escape from an unhappy home life, substance abuse and emotional problems, only *incapacity* and not *difficulty* in giving consent and in realizing a true community of life and love invalidates a marriage. Such an incapacity exists only when an anomaly of a serious nature is present which substantially impairs an individual's capacity to understand the essential rights and duties of marriage or to make a decision to commit to these responsibilities.

### **Incapacity to Assume the Essential Obligations of Marriage**

A party who lacks the necessary psychological integration to enter into a marriage may not be capable of assuming the essential obligations of marriage for causes of a "psychic nature" (c. 1095, 3°). This can include personality, anxiety and schizophrenic disorders or can also be due to severe alcoholism, a homosexual orientation or other emotional or psychological conditions that would render a person incompetent to enter marriage. Evidence in support of an assertion of this nature usually requires the analysis or investigation of a psychological expert.

### **Total Simulation**

If a party enters into marriage for reasons other than truly establishing a marital union and this is done intentionally, the marriage will then be invalid either on the basis of "Total Simulation" or "Partial Simulation." Total simulation refers to intentionally withholding consent to the marriage itself. For example, if a party enters into marriage simply to establish legal residence in the United States and does not intend to enter into an actual marriage with the other party, this would be "Total Simulation." Partial simulation refers to withholding consent to an essential element or property of marriage, for example, intentionally excluding fidelity, indissolubility, children or the community of life from the marital consent. In cases of total simulation, the Tribunal will attempt to discover the motivations for such an action. Why did the person exclude marriage itself? Witness testimony or other means of establishing the intention of the party will be essential in order to find in the affirmative on this ground. One of the most common examples of total simulation is a person who marries to obtain U.S. citizenship.

#### **Partial Simulation: Intention Against Fidelity**

If a party at the time of marriage has specifically excluded any intention of being faithful within the marriage, this intention against fidelity invalidates the party's marital consent. This "exclusion" must be present at the time of the marriage. It cannot be based solely on circumstances arising after the parties have married. An act of adultery after the marriage has taken place does not prove that such an intention existed at the time of marriage. The person must have entered the marriage in question with at least an inadvertent or implicit reservation that he or she was free to enter into or planned to enter into intimate relationships with persons other than his or her spouse.

#### **Partial Simulation: Intention Against Indissolubility**

If a party enters into marriage not believing that he or she was bound to this union for life (c. 1056), this would constitute an intention against indissolubility or the permanence of marriage. Such an intention must be more than a "divorce mentality" which holds that divorce is justified under circumstances. An individual who intentionally excludes indissolubility must have a specific intention of departing this marriage for specific reasons or under certain circumstances.

#### **Partial Simulation: Intention Against Children**

If a party has excluded any possibility of bringing children into a marriage, this exclusion constitutes an intention against the procreation and education of children which is an integral part of the marriage covenant (c. 1055). This intention may be specifically stated prior to the marriage, or one or both parties may have simply refused to discuss the matter hiding their true intentions and then made an adamant statement only after their marriage not to have children.

### **Partial Simulation: Intention Against the Good of the Spouse**

If a party has entered into a marriage in which he or she has excluded any intention or possibility of establishing a true partnership and interpersonal relationship with his or her spouse, this could constitute an intention against the good of the spouse. One cannot enter into a marriage with an expectation that the partner in the marriage is simply a provider, care giver or housekeeper. Rather, the parties in a marriage are obligated to “establish between themselves a partnership of the whole life...which is ordered by its nature to the good of the spouses” (c. 1055, §2). One who enters into marriage with the expectation or condition that such a partnership is not intended cannot place a valid marital consent. Such an intention can be established either through specific statements made by a party or by means of behaviors which demonstrate the intentional exclusion of a conjugal partnership.

### **Future Condition**

If a party has attached a future condition or expectation to the marriage so that if such a condition or expectation is not fulfilled the party would not consider the marriage valid, the matrimonial consent exchanged by that party is not considered valid (c. 1102). An example of such a condition would be a person who so repulsed by the use of alcohol that he or she would only marry a person who does not use alcohol. The very fact of placing such a condition, whether or not the other party does use alcohol, would render the marital consent placed by the party invalid.

### **Force and Fear**

If a party enters into a marriage only because he or she has been forced by circumstances or greatly fears for his or her well being, the marital consent exchanged by this party would be invalid (c. 1103). The source of this force or fear must be extrinsic in nature and the actual cause that has compelled the marriage. The most frequent example of a marriage of this nature is a “shot gun wedding” due to the bride’s pregnancy.

### **Error of a Quality of a Person**

If a party enters into a marriage fully intending that his or her partner possesses a specific quality or characteristic that this party considers essential to the marriage, and such a quality or characteristic is lacking, the party’s marital consent would be invalid. Such qualities or characteristics may be moral, physical, social, religious or legal. If the party has placed his or her marital consent based upon the existence of this quality or characteristic, the absence of that quality or characteristic would invalidate the marriage (c. 1097, §2) .

### **Malicious Deceit**

If a party is led into marriage by means of deceit intentionally and maliciously perpetrated concerning a quality of the other party in order to bring about the exchange of marital consent, the fact of the deceit would invalidate the marriage. In such a case, the deceit can be perpetrated by the other party or a third party and must involve some quality concerning the other party which of its very nature would seriously disturb the partnership of conjugal life (c. 1098). The whole focus here is that one party conceals some fact or quality so that the other party will consent to marriage, for example, the fact that the other party was previously married if, for this reason, the intended spouse would refuse to marry someone who had been previously married.

For additional information on invalidity and marriage, please consult  
*Annulment: The Wedding that Was*, by Michael Smith Foster  
(New York: Paulist Press, 1999).

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