

Adult Education Course

Controversial and Often Misunderstood Issues in Catholicism

Week 5

MARRIAGE, FAMILY & SEXUALITY ISSUES, PART II

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Introduction

Tonight we turn to another enormous topic, the canonical bases for a valid marriage, on the bases of the lack of which every declaration of nullity is made. Last week we focused on conjugal love and its various “impostors.” This week we turn to the canonical issues surrounding marriages: marriage, divorce, remarriage and declarations of nullity.

In order for a marriage to take place, there must be the (1) legitimately-manifested (2) consent of a man and a woman (3) who are capable according to law of giving consent. If any of these three elements is absent, no marriage takes place, even though everyone witnesses that a wedding occurred that day. Years later, if there is an investigation of whether the requisite elements for a valid marriage were present on the day of the wedding, such an investigation may determine that at least one of these elements was absent and consequently that no marriage occurred. Such a declaration of the nullity of a marriage is what is commonly called an annulment.

There is considerable controversy and misunderstanding about declarations of nullity, both within the Church and outside of the Church. In order to sort through all of the confusion, it is necessary first to establish those necessary elements for a true marriage. From there we can more clearly understand on what bases declarations of nullity can be legitimately granted — which will comprise the second half of this discussion.

It must be added before we begin that declarations of nullity, rather than undermining Christian teaching on marriage, actually strengthen it. God created the good and natural reality of marriage “in the beginning” with certain properties. Christ elevated this good natural institution to the dignity of one of the seven sacraments. Consequently the Church must take marriage very seriously, because God takes it so seriously. The whole context of tonight’s discussion operates within these parameters and with this seriousness.

In addition to the Catechism and the Code of Canon Law, I am heavily indebted to two sources in my preparation of this handout: Fr. Michael S. Foster’s *Annulment: The Wedding that Was*, Paulist Press, 1999 and *The Code of Canon Law: A Text and Commentary* by the Canon Law Society of America, 1985. Fr. Foster is the Associate Judicial Vicar of the Archdiocese of Boston and his work gives a very concise and clear presentation of the Church’s teaching on the process of petitioning for a declaration of nullity that I would highly recommend for those who are interested in further reading.

Outline

- I. What is marriage?
- II. The requirements for a valid marriage
 - A) Consent of the parties
 - B) Legitimately manifested
 - C) Between persons who are capable according to law of giving consent
- III. Consummation of the marriage
- IV. Dissolution of a good and natural marriage
- V. Process of petitioning for a declaration of nullity
- VI. Other commonly-asked questions surrounding marriage, divorce, remarriage and annulments

What is marriage?

I. What is marriage?

A) Marriage is a partnership, an intimate community of life and love, that a woman and a man establish between themselves for the whole of life. It has been established by God.

Canon 1055: §1. The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life, is by its nature ordered toward the good of the spouses and the procreation and education of offspring; this covenant between baptized persons has been raised by Christ the Lord to the dignity of a sacrament.

CCC 1603 The intimate community of life and love which constitutes the married state has been established by the Creator and endowed by him with its own proper laws.... God himself is the author of marriage." The vocation to marriage is written in the very nature of man and woman as they came from the hand of the Creator. Marriage is not a purely human institution despite the many variations it may have undergone through the centuries in different cultures, social structures, and spiritual attitudes. These differences should not cause us to forget its common and permanent characteristics. Although the dignity of this institution is not transparent everywhere with the same clarity, some sense of the greatness of the matrimonial union exists in all cultures.

B) A marriage is constituted or brought about (cf. Canon 1057 and below)

- 1) through the consent of the parties (man and woman),
- 2) legitimately manifested
- 3) between persons who are capable according to law of giving consent.

C) The purposes of marriage are by nature (cf. canon 1055 above)

- 1) the good of the spouses and
- 2) the procreation and education of offspring

D) The goods of marriage are:

1) Proles — children, or at least the sincere openness to them (fecundity)

CCC 1652 "By its very nature the institution of marriage and married love is ordered to the procreation and education of the offspring and it is in them that it finds its crowning glory." Children are the supreme gift of marriage and contribute greatly to the good of the parents themselves. God himself said: "It is not good that man should be alone," and "from the beginning [he] made them male and female"; wishing to associate them in a special way in his own creative work, God blessed man and woman with the words: "Be fruitful and multiply." Hence, true married love and the whole structure of family life which results from it, without diminishment of the other ends of marriage, are directed to disposing the spouses to cooperate valiantly with the love of the Creator and Savior, who through them will increase and enrich his family from day to day.

CCC 1653 The fruitfulness of conjugal love extends to the fruits of the moral, spiritual, and supernatural life that parents hand on to their children by education. Parents are the principal and first educators of their children. In this sense the fundamental task of marriage and family is to be at the service of life.

2) Fides — lifelong exclusive fidelity

CCC 1646 By its very nature conjugal love requires the inviolable fidelity of the spouses. This is the consequence of the gift of themselves which they make to each other. Love seeks to be definitive; it cannot be an arrangement "until further notice." The "intimate union of marriage, as a mutual giving of two persons, and the good of the children, demand total fidelity from the spouses and require an unbreakable union between them.

CCC 1648 It can seem difficult, even impossible, to bind oneself for life to another human being.¹ This makes it all the more important to proclaim the Good News that God loves us with a definitive and irrevocable love, that married couples share in this love, that it supports and sustains them, and that by their own faithfulness they can be witnesses to God's faithful love. Spouses who with God's grace give this witness, often in very difficult conditions, deserve the gratitude and support of the ecclesial community.

3) Sacramentum — an indissoluble bond

E) The essential properties of marriage are:

1) Unity

Canon 1056: The essential properties of marriage are unity and indissolubility, which in Christian marriage obtain a special firmness in virtue of the sacrament.

2) Indissolubility

CCC 1644 The love of the spouses requires, of its very nature, the unity and indissolubility of the spouses' community of persons, which embraces their entire life: "so they are no longer two, but one flesh." They "are called to grow continually in their communion through day-to-day fidelity to their marriage

¹CCC 1649 Yet there are some situations in which living together becomes practically impossible for a variety of reasons. In such cases the Church permits the physical separation of the couple and their living apart. The spouses do not cease to be husband and wife before God and so are not free to contract a new union. In this difficult situation, the best solution would be, if possible, reconciliation. The Christian community is called to help these persons live out their situation in a Christian manner and in fidelity to their marriage bond which remains indissoluble.

promise of total mutual self-giving. This human communion is confirmed, purified, and completed by communion in Jesus Christ, given through the sacrament of Matrimony. It is deepened by lives of the common faith and by the Eucharist received together.

3) (For Christian marriages) a Sacramental Bond and the graces that come with it.

Canon 1134: From a valid marriage arises a bond between the spouses which by its very nature is perpetual and exclusive; furthermore, in a Christian marriage the spouses are strengthened and, as it were, consecrated for the duties and the dignity of their state by a special sacrament.

CCC 1641 "By reason of their state in life and of their order, [Christian spouses] have their own special gifts in the People of God." This grace proper to the sacrament of Matrimony is intended to perfect the couple's love and to strengthen their indissoluble unity. By this grace they "help one another to attain holiness in their married life and in welcoming and educating their children.

CCC 1642 Christ is the source of this grace. "Just as of old God encountered his people with a covenant of love and fidelity, so our Savior, the spouse of the Church, now encounters Christian spouses through the sacrament of Matrimony." Christ dwells with them, gives them the strength to take up their crosses and so follow him, to rise again after they have fallen, to forgive one another, to bear one another's burdens, to "be subject to one another out of reverence for Christ," and to love one another with supernatural, tender, and fruitful love. In the joys of their love and family life he gives them here on earth a foretaste of the wedding feast of the Lamb.

F) Marriage is a natural institution, as we see with Adam and Eve.

1) **Gen. 2:18** Then the LORD God said, "It is not good that the man should be alone; I will make him a helper as his partner." 19 So out of the ground the LORD God formed every animal of the field and every bird of the air, and brought them to the man to see what he would call them; and whatever the man called every living creature, that was its name. 20 The man gave names to all cattle, and to the birds of the air, and to every animal of the field; but for the man there was not found a helper as his partner. 21 So the LORD God caused a deep sleep to fall upon the man, and he slept; then he took one of his ribs and closed up its place with flesh. 22 And the rib that the LORD God had taken from the man he made into a woman and brought her to the man. 23 Then the man said, "This at last is bone of my bones and flesh of my flesh; this one shall be called Woman, for out of Man this one was taken." 24 Therefore a man leaves his father and his mother and clings to his wife, and they become one flesh.

CCC 1603 The vocation to marriage is written in the very nature of man and woman as they came from the hand of the Creator. Marriage is not a purely human institution despite the many variations it may have undergone through the centuries in different cultures, social structures, and spiritual attitudes. These differences should not cause us to forget its common and permanent characteristics. Although the dignity of this institution is not transparent everywhere with the same clarity, some sense of the greatness of the matrimonial union exists in all cultures. "The well-being of the individual person and of both human and Christian society is closely bound up with the healthy state of conjugal and family life."

CCC 1604 God who created man out of love also calls him to love the fundamental and innate vocation of every human being. For man is created in the image and likeness of God who is himself love. Since God created him man and woman, their mutual love becomes an image of the absolute and unending love with which God loves man. It is good, very good, in the Creator's eyes. And this love which God blesses is intended to be fruitful and to be realized in the common work of watching over creation: "And God blessed them, and God said to them: 'Be fruitful and multiply, and fill the earth and subdue it.'"

CCC 1611 Seeing God's covenant with Israel in the image of exclusive and faithful married love, the prophets prepared the Chosen People's conscience for a deepened understanding of the unity and indissolubility of marriage. The books of Ruth and Tobit bear moving witness to an elevated sense of marriage and to the fidelity and tenderness of spouses. Tradition has always seen in the Song of Solomon a unique expression of human love, a pure reflection of God's love - a love "strong as death" that "many waters cannot quench."

2) A real marriage can exist, therefore, between two pagans, or between any two non-Christians who are capable of giving their consent to each other and legitimately do and who accept the purpose, goods and the properties of marriage.

G) Christ has raised the natural institution of marriage which God established to the dignity of a sacrament. Hence when baptized Christians minister the sacrament to each other according to the proper way, it is by definition and in reality a sacrament.

Canon 1055: §1 ... This covenant between baptized persons has been raised by Christ the Lord to the dignity of a sacrament. §2. For this reason a matrimonial contract cannot validly exist between baptized persons unless it is also a sacrament by that fact.

CCC 1613 On the threshold of his public life Jesus performs his first sign - at his mother's request - during a wedding feast. The Church attaches great importance to Jesus' presence at the wedding at Cana. She sees in it the confirmation of the goodness of marriage and the proclamation that thenceforth marriage will be an efficacious sign of Christ's presence.

H) Christian marriage is ultimately a sign and symbol of the Marriage between Christ and the Church.

1) **Eph. 5:22** Wives, be subject to your husbands as you are to the Lord. 23 For the husband is the head of the wife just as Christ is the head of the church, the body of which he is the Savior. 24 Just as the church is subject to Christ, so also wives ought to be, in everything, to their husbands. 25 Husbands, love your wives, just as Christ loved the church and gave himself up for her, 26 in order to make her holy by cleansing her with the washing of water by the word, 27 so as to present the church to himself in splendor, without a spot or wrinkle or anything of the kind — yes, so that she may be holy and without blemish. 28 In the same way, husbands should love their wives as they do their own bodies. He who loves his wife loves himself. 29 For no one ever hates his own body, but he nourishes and tenderly cares for it, just as Christ does for the church, 30 because we are members of his body. 31 "For this reason a man will leave his father and mother and be joined to his wife, and the two will become one flesh." 32 This is a great mystery, and I am applying it to Christ and the church. 33 Each of you, however, should love his wife as himself, and a wife should respect her husband.

2) This Pauline theology, which Jesus himself introduced by calling himself the Bridegroom on several occasions (see Week 1 on Priestly Ordination), finds recognition in the Catechism.

CCC 1602 Sacred Scripture begins with the creation of man and woman in the image and likeness of God and concludes with a vision of "the wedding-feast of the Lamb." Scripture speaks throughout of marriage and its "mystery," its institution and the meaning God has given it, its origin and its end, its various

realizations throughout the history of salvation, the difficulties arising from sin and its renewal "in the Lord" in the New Covenant of Christ and the Church.

- 3) This is the reason why the celebration of marriage between Catholics normally occurs in the context of a nuptial Mass, because Christian marriage is a symbol of the marriage between Christ and the Church (not the other way around!), which is consummated, like any marriage, when the Bride (the Church) takes the Bridegroom's flesh within her and the two become one flesh, which is what happens in Holy Communion.

CCC 1621 In the Latin Rite the celebration of marriage between two Catholic faithful normally takes place during Holy Mass, because of the connection of all the sacraments with the Paschal mystery of Christ. In the Eucharist the memorial of the New Covenant is realized, the New Covenant in which Christ has united himself for ever to the Church, his beloved bride for whom he gave himself up. It is therefore fitting that the spouses should seal their consent to give themselves to each other through the offering of their own lives by uniting it to the offering of Christ for his Church made present in the Eucharistic sacrifice, and by receiving the Eucharist so that, communicating in the same Body and the same Blood of Christ, they may form but "one body" in Christ.

- 4) The goods and properties of marriage are derived from this marriage of Christ and the Church and this is why they must exist in every marriage:

- a) Unity — because Christ and the Church are united in one Body;
- b) Indissolubility — because Christ will never abandon the Church; Christ and the Church exist in an "everlasting" Covenant of Love.

CCC 1614 In his preaching Jesus unequivocally taught the original meaning of the union of man and woman as the Creator willed it from the beginning. Permission given by Moses to divorce one's wife was a concession to the hardness of hearts. The matrimonial union of man and woman is indissoluble: God himself has determined it "what therefore God has joined together, let no man put asunder."

CCC 1615 This unequivocal insistence on the indissolubility of the marriage bond may have left some perplexed and could seem to be a demand impossible to realize. However, Jesus has not placed on spouses a burden impossible to bear, or too heavy — heavier than the Law of Moses. By coming to restore the original order of creation disturbed by sin, he himself gives the strength and grace to live marriage in the new dimension of the Reign of God. It is by following Christ, renouncing themselves, and taking up their crosses that spouses will be able to "receive" the original meaning of marriage and live it with the help of Christ. This grace of Christian marriage is a fruit of Christ's cross, the source of all Christian life.

- c) Fecundity — Because the relationship between Christ and the Church is fruitful and begets many new children for eternal life;
- d) Fidelity — Christ will never abandon or divorce the Church, as God threatened to do to the people of Israel when they "adulterously" abandoned him for fake gods.

CCC 1647 The deepest reason [for the fidelity of marriage] is found in the fidelity of God to his covenant, in that of Christ to his Church. Through the sacrament of Matrimony the spouses are enabled to represent this fidelity and witness to it. Through the sacrament, the indissolubility of marriage receives a new and deeper meaning.

- e) Sacramental bond — The relationship between Christ and the Church is an efficacious sign of divine life and love that is shared between Bridegroom and Bride.

CCC 1617 The entire Christian life bears the mark of the spousal love of Christ and the Church. Already Baptism, the entry into the People of God, is a nuptial mystery; it is so to speak the nuptial bath which precedes the wedding feast, the Eucharist. Christian marriage in its turn becomes an efficacious sign, the sacrament of the covenant of Christ and the Church. Since it signifies and communicates grace, marriage between baptized persons is a true sacrament of the New Covenant.

- I. Therefore, since the marriage bond is sealed by God, a marriage that is concluded and consummated between baptized persons can never be dissolved.

CCC 1640 Thus the marriage bond has been established by God himself in such a way that a marriage concluded and consummated between baptized persons can never be dissolved. This bond, which results from the free human act of the spouses and their consummation of the marriage, is a reality, henceforth irrevocable, and gives rise to a covenant guaranteed by God's fidelity. The Church does not have the power to contravene this disposition of divine wisdom.

- J. Divorce and remarriage, therefore, is tantamount to adultery and violation of the words of the Lord about the indissolubility of marriage:

CCC 1650 Today there are numerous Catholics in many countries who have recourse to civil divorce and contract new civil unions. In fidelity to the words of Jesus Christ - "Whoever divorces his wife and marries another, commits adultery against her; and if she divorces her husband and marries another, she commits adultery, the Church maintains that a new union cannot be recognized as valid, if the first marriage was. If the divorced are remarried civilly, they find themselves in a situation that objectively contravenes God's law.

- K. However, a declaration of nullity is not a divorce, but rather a judgment and declaration on the part of the Church that a marriage never existed in the first place, even though a wedding took place, because the spouses either

- 1) did not give full and free consent to the state of marriage as God intends it; or

- 2) were not capable of placing (giving) such consent; or
- 3) did not give their consent in the proper way.

We will see how attempted marriages can fail in any of these three ways in subsequent sections, when we examine those who have the ability or right to marry, what constitutes free and full consent to marriage as God and intends it, and the legitimate manifestation of such consent.

II. The requirements for a valid marriage.

A) As we saw above, from canon 1057, which is based on the constant tradition of the Church, a marriage is constituted or brought about

- 1) through the consent of the parties (man and woman)
- 2) legitimately manifested
- 3) between persons who are capable according to law of giving consent.

We will now look at each of these three requirements in succession.

B) What constitutes the **consent of the parties**?

- 1) In the Latin Church, it is ordinarily understood that the spouses, as ministers of Christ's grace, mutually confer upon each other the sacrament of Matrimony by expressing their consent before the Church (CCC 1623).

CCC 1626 The Church holds the exchange of consent between the spouses to be the indispensable element that "makes the marriage." If consent is lacking there is no marriage.

- 2) Matrimonial consent is an act of the will by which a man and a woman, through an irrevocable covenant, mutually give and accept each other in order to establish marriage (Canon 1057 §2).

CCC 1639 The consent by which the spouses mutually give and receive one another is sealed by God himself. From their covenant arises "an institution, confirmed by the divine law, ... even in the eyes of society." The covenant between the spouses is integrated into God's covenant with man: "Authentic married love is caught up into divine love."

CCC 1627 The consent consists in a "human act by which the partners mutually give themselves to each other": "I take you to be my wife" - "I take you to be my husband." This consent that binds the spouses to each other finds its fulfillment in the two "becoming one flesh."

- 3) The man and a woman who are free to contract marriage (free from any natural or ecclesiastical impediment) must freely express their consent — in other words they must not be under any constraint (CCC 1625).

CCC 1628 The consent must be an act of the will of each of the contracting parties, free of coercion or grave external fear. No human power can substitute for this consent. If this freedom is lacking the marriage is invalid.

- 4) The priest (or deacon) who assists at the celebration of a marriage receives the consent of the spouses in the name of the Church and gives the blessing of the Church. The presence of the Church's minister (and also of the witnesses) visibly expresses the fact that marriage is an ecclesial reality (CCC 1630).

- 5) Because consent is of paramount importance, the following people are incapable of contracting marriage, because they are incapable of true consent (canon 1095):

- 1) Those who lack the sufficient use of reason;

- a) For matrimonial consent to be valid (canon 1096) it is necessary that the contracting parties at least not be ignorant that

- 1) marriage is a permanent consortium

- a) This consortium is not simply the context within which procreative sexual acts take place, but a partnership of the spouses.

- b) This requires the knowledge that some mutual cooperation, support and companionship is required permanently.

- 2) between a man and a woman

- 3) which is ordered toward the procreation of offspring

- 4) by means of some sexual cooperation.

- b) Such ignorance is not presumed after puberty.
 - c) This is a lack of knowledge who is naturally capable of such knowledge, not someone who would not be capable due to psychic causes or a total lack of the use of reason.
- 2) Those who suffer from grave lack of discretion of judgment concerning essential matrimonial rights and duties which are to be mutually given and accepted;
- a) The person must be capable of making a responsible human act.
 - 1) Those who, at the time of the wedding, lack consciousness due to alcoholic intoxication, drugs, lack of sleep, or epilepsy, marry invalidly although they had the intention of marrying prior to the ceremony.
 - 2) The person may appear somewhat alert but is actually not aware of his or her surroundings or actions.
 - 3) Similarly an individual with the intelligence quotient of a five-year-old may be able to say "I do" at a wedding ceremony, but the words would pretty much be meaningless.
 - b) The person must have the ability to evaluate sufficiently the nature of marriage and, consequently, choose it freely;
 - 1) The person does not only consent to a wedding but makes a decision about his or her life and the life of the marriage partner. If there is a serious inability to evaluate critically the decision to marry in light of the consequent obligations and responsibilities, then consent may well be invalid.
 - 2) The person must be able to relate marriage as an abstract reality — what it theoretically involves — to his or her concrete situation.
 - c) The person must have the ability to assume its essential obligations.
 - 1) A person may be capable of understanding the nature of marriage and of making a deliberate act of the will while at the same time being radically incapable of assuming its obligations.
 - 2) Early jurisprudence (from the Roman Rota) related this incapacity either to the ability to exchange the right too the body for heterosexual acts or to the essential obligations arising from the three goods of marriage: children, fidelity and permanence.
 - 3) Now it is held that it involves, in its totality, the right to the community of the whole of life. The spouses must be capable of giving themselves and accepting the other as a distinct person. They must be capable of relating to each other in a manner that is unique to marriage.
- 3) Those who are not capable of assuming the essential obligations of matrimony due to causes of a psychic nature.
- a) The law does not specify which types of psychic causes can incapacitate one for marriage nor does it give a partial listing of disorders which have a detrimental effect on the marital community.
 - b) The intention clearly seems to be to include not simply sexual anomalies but also other psychological disorders which affect the personality.
 - 1) personality disorders
 - 2) emotional immaturity — a psychological condition which affects the ability to make judgments, to control one's actions and to relate to one another.
- 6) Various situations in which consent is not validly given.
- a) Error concerning the person.

Canon 1097: §1. Error concerning the person renders marriage invalid.

 - 1) Such a case would be rare
 - 2) Could happen with identical twins, or with spouses you have never met (via the Internet) or through arranged marriages for citizenship rites.
 - b) Error concerning a quality of a person

Canon 1097: §2. Error concerning a quality of a person, even if such error is the cause of the contract, does not invalidate matrimony unless this quality was directly and principally intended.

- 1) The quality in question must be directly and principally intended by the person placing the consent.
 - a) It is “directly” intended when the quality is intended in and of itself.
 - b) It is “principally” intended when the quality is more important than the person.
- 2) If the person had known that the intended quality was not present in the spouse on the wedding day, then he or she would have never married that individual.
- 3) An example: if one would never have married a bisexual and one discovered after marriage that his or her spouse was bisexual, the original consent would not have been validly placed and the marriage would be null.

c) Error as a result of fraud

Canon 1098: A person contracts invalidly who enters marriage deceived by fraud, perpetrated to obtain consent, concerning some quality of the other party which of its very nature can seriously disturb the partnership of conjugal life.

- 1) Fraud or deceit is a deliberate act of deception by which one person hides a significant fact, the presence or absence of a certain quality about himself or herself from another to achieve a given end, marriage;
- 2) The fraud must be real, not imagined.
- 3) The deceit must concern something that is so serious in nature that it can seriously disrupt the marriage.
- 4) Examples:
 - a) If someone deliberately hid the fact that he or she had AIDS from the marriage partner, which would be something that clearly would have affected marriage;
 - b) If a woman deliberately hid the fact that she was carrying someone else’s child, or a man who was the father of children with another woman;
 - c) If someone hid the fact that he or she had a criminal record.

d) Error concerning the unity, indissolubility or sacramental dignity of marriage

Canon 1099: Error concerning the unity, indissolubility or sacramental dignity of matrimony does not vitiate matrimonial consent so long as it does not determine the will.

- 1) The simple fact that a person may believe marriage to be something other than that which the Church teaches doesn’t in itself render consent invalid, as long as the individual marries according to the Church’s mindset.
- 2) However, if an individual knows what the Church teaches, but marries according to his or her own (opposed) mindset, then that person marries invalidly.
- 3) So if someone knows that the Church teaches the unity, indissolubility and sacramental dignity of marriage (when two baptized individuals are involved), but rejects these and simulates “I do’s” to these questions during the wedding ceremony, his or her consent is invalidly placed and no marriage takes place.
- 4) Error concerning unity would be belief in polygamy or in the ability to continue to have affairs “on the side.”
- 5) Error concerning indissolubility would be anything from the mere “hope” that a marriage might survive to outright rejection of the fact that marriage is indissoluble or belief that the State has the power to dissolve the marriage bond.
- 6) Error concerning the sacramental dignity of marriage would have to consist in a belief that marriage, even though performed in a Catholic church, is merely a civil affair

- a) It is more than a confused or imprecise idea of why it is a sacrament or why marriage has a religious dimension — otherwise the majority of marriages would be null since most people do not consider marriage to be a sacrament.
 - b) Such an error, rather, must be about the fundamental sacramentality of marriage and must be so deeply rooted that the person conceives of it exclusively as a human enterprise governed solely by civil law or local custom.
- e) Suspicion that a marriage might be null does not necessarily mean that you cannot give true matrimonial consent.

Canon 1100: The knowledge or opinion of the nullity of a marriage does not necessarily exclude matrimonial consent.

- 1) This canon covers those situations in which one might erroneously believe that, because of an impediment or some other reason, he or she cannot validly marry. In such situations, where one might suspect the nullity of a marriage, a person can still validly give his or her consent.
- 2) If one or both parties believe that an impediment exists yet want to enter a valid marriage, the consent itself is not defective. If there really is no impediment, the marriage is valid.
- 3) On the other hand, if an impediment does exist and it can be dispensed, the renewal of consent is not obligatory. Rather a sanation can be granted to resolve the situation (for sanations, see later).
- 4) If the knowledge or opinion of nullity causes the person to go through an ecclesiastical ceremony with the belief that consent is merely a civil formality lacking all sacramental value, then the situation is different. Here the party is actually feigning or simulating consent, since there is no will to enter a true marriage. Rather, there is the belief that the consent itself has no religious or sacramental value.

f) Simulation of marital consent

Canon 1101: §1. The internal consent of the mind is presumed to be in agreement with the words or signs employed in celebrating matrimony. §2. But if either or both parties through a positive act of the will should exclude marriage itself, some essential element or an essential property of marriage, it is invalidly contracted.

- 1) The presumption is that people mean what they say. When a person simulates marriage, he or she is basically lying. The wedding vows intend one meaning, but the person intends another.
- 2) Proof of simulation is often summed up by the maxim *actions speak louder than words*. Though a person may say “I do” on the wedding day, if all the subsequent actions of the person say “I don’t,” then it is clear that the person simulated consent. The vows are rendered meaningless and so the marriage is declared null.
- 3) Total simulation is the act of externally feigning consent and internally excluding marriage. This individual has no desire to establish a partnership of life with the other person. The end result is an arrangement that is a fake, an imitation of marriage. The reason behind this fakery is called the “motive” for simulation. Marriage can be totally excluded in three ways:
 - a) If the parties exclude cohabitation, they have no intention of living together as husband and wife.
 - b) Persons may go through a wedding for an extraneous reason, like getting someone a green card, though there is no intention ever of living as man and wife.
 - c) A person may substitute his or her own ideas of marriage for true marriage, e.g., thinking that it is simply a contractual agreement where one “hires” another and treats the person as an employee.
- 4) Partial simulation is the exclusion of an essential “element” (good of the spouses and the procreation and education of children) or “property” (unity and indissolubility) or the sacramental dignity of the marriage.
 - a) If a person partially simulates on the wedding day, he or she wants to be married, but denies the other person the right to a particular dimension of marriage.
 - b) If there is an denial of the right to non-contraceptive intercourse, then there is an intention against children — against the procreation and education of children — and one marries invalidly (i.e., one doesn’t marry at all in God’s eyes).

- c) Likewise, if a person excludes the fidelity or unity of marriage on the day of the wedding, then that person's consent is defective and the marriage is invalid.
 - a) Willed polygamy, for example, is excluded.
 - b) If someone wants to maintain adulterous liaisons "on the side," there is defective consent and an invalid marriage.
 - c) It is important to note that the exclusion of fidelity must be present on the wedding day for a marriage to be invalid for this reason. A spouse who happens to have an affair 15 years into marriage sins, but this is not an intention against fidelity on the date of marriage.
- d) If a person excludes a lifelong commitment of life and love in marriage, then the marriage is invalid. If someone thinks divorce and remarriage is a legitimate option "if they grow apart," no marriage takes place. Or if someone intends to be married "for as long as I'm happy," no marriage takes place.
- e) If a person excludes an intention that the marriage he or she is entering is for the "good of the spouses," then no marriage takes place. An example would be if a man entered marriage thinking that it was fine for him to abuse his wife for his own selfish reasons.
- f) If, in a Christian wedding (which by definition must be sacramental) there is an intention against the sacramentality of marriage, no marriage takes place.
 - a) If a baptized Christian has fallen away from the faith and considers the Church's teaching on sacraments to be superstition and rejects marriage as a sacrament (and is only having a church wedding to please his bride or family), then no wedding takes place.
 - b) If a Protestant comes from a denomination that doesn't believe marriage to be a sacrament and himself or herself shares that belief, no marriage takes place. It's hard to believe that a person administers or receives a sacrament when he or she doesn't believe that marriage is a sacrament.

g) Conditional marriages

Canon 1102: §1. Marriage based on a condition concerning the future cannot be contracted validly. §2. Marriage based on a condition concerning the past or the present is valid or invalid, insofar as the subject matter of the condition exists or not. §3. The condition mentioned in §2 cannot be placed licitly without the written permission of the local ordinary.

- 1) If future conditions are placed on the wedding day, the marriage is invalid.
 - a) Prior to the 1983 Code of Canon Law, a future condition placed on a marriage only invalidated consent if the condition went unfulfilled (i.e., someone married another on the presumption that he or she would soon inherit tons of money).
 - b) However, in the 1983 Code, all future conditions rendered consent invalid.
- 2) If conditions are placed regarding the past or present, they may or may not invalidate the marriage, depending upon the circumstances.
 - a) When the condition is more important than marriage itself, then the condition invalidates the marriage (whether or not the person placing the condition is aware of its invalidating effect). It is enough for the individual to hold that without the circumstance or the quality present in the condition, he or she would not want the marriage.
 - b) The condition must have an objective importance and affect the future life of the couple (e.g., the absence of a sexually transmitted disease or sexual perversion).

h) Force and fear

Canon 1103: A marriage is invalid if it is entered into due to force or grave fear inflicted from outside the person, even when inflicted unintentionally, which is of such a type that the person is compelled to choose matrimony in order to be free from it.

- 1) The act of consent must be free. If it is forced or there is an excessive amount of fear brought to bear on the person's consent, then the marriage was invalid from the beginning.
- 2) Force refers to an external physical or moral impulse that cannot be resisted. It is a coercion of another's will. In a forced marriage, a person is unable to choose his or her spouse.

3) The fear must be

- a) grave (death threats, imprisonment or loss of inheritance)
- b) extrinsic to the person (it can't just come from the person's mind); and
- c) the cause of the wedding (a person marries to try to free him or herself from the fear). The marriage is invalid if it was contracted because of fear.

C) What does it mean to be **legitimately manifested**?

- 1) Marriage is both a private and a public act; it has many social consequences since it impacts upon the welfare of the community.
 - a) Therefore, the act of marrying is public and regulated by law. This is an easy concept to grasp because it is true not only in the Church, but also in the State.
 - b) The State requires blood tests, a marriage license and a duly appointed official as well as witnesses to observe the couple's exchange of consent. The Church demands similar, though not identical requirements.
- 2) The form of marriage requires the presence of an official witness who assists the parties at the time of consent, as well as two witnesses who are present for the exchange of vows. Whenever a Catholic marries, this form is required, unless dispensed from, for a marriage to be valid.

Canon 1108: §1. Only those marriages are valid which are contracted in the presence of the local ordinary or the pastor or a priest or deacon delegated by either of them, who assist, and in the presence of two witnesses, according to the rules expressed in the following canons, with due regard for the exceptions mentioned in cann. 144, 1112, §1, 1116 and 1127, §§ 2 and 3. §2. The one assisting at a marriage is understood to be only that person who, present at the ceremony, asks for the contractants' manifestation of consent and receives it in the name of the Church.

- 3) These requirements became an official part of Church law in the 1570s in order to prevent the situation of clandestine or secret marriages that could never be proven. If two people married each other out in the woods, there would often be no official record of it; if one of the two decided to marry someone else, the other person had no legal recourse because he or she could not prove that they had been married. Since that time, all marriages conducted outside of the proper "form" of marriage (or without a dispensation from that form) are invalid.
- 4) There must be an official witness on the part of the Church: a Bishop, Priest or Deacon with the official capacities to celebrate a wedding in a particular parish (either because he is the pastor, parochial vicar or has received delegation from the pastor to celebrate that wedding there), or with episcopal approval in areas of great clerical shortage, an episcopally-approved layman or laywoman.

CCC 1630 The priest (or deacon) who assists at the celebration of a marriage receives the consent of the spouses in the name of the Church and gives the blessing of the Church. The presence of the Church's minister (and also of the witnesses) visibly expresses the fact that marriage is an ecclesial reality.

Canon 1109: Unless through a sentence or decree they have been excommunicated, interdicted or suspended from office or declared such, in virtue of their office the local ordinary and the pastor validly assist within the confines of their territory at the marriages of their subjects as well as of non-subjects provided one of the contractants is of the Latin rite.

Canon 1111: §1. As long as they validly hold office, the local ordinary and the pastor can delegate to priests and deacons the faculty, even a general one, to assist at marriages within the limits of their territory. §2. To be valid the delegation of the faculty to assist at marriages must be given expressly to specified persons; if it is a question of a special delegation, it is to be granted for a specific marriage; however, if it is a question of a general delegation, it is to be granted in writing.

Canon 1112: §1. With the prior favorable opinion of the conference of bishops and after the permission of the Holy See has been obtained, the diocesan bishop can delegate lay persons to assist at marriages where priests or deacons are lacking. §2. A suitable lay person is to be chosen who is capable of giving instructions to those to be wed and qualified to perform the marriage liturgy correctly.

- 5) Only Catholics are bound to the form of marriage. The law stipulates that a baptized Catholic who has not left the Church by a formal act must exchange consent in the presence of the proper official of marriage (unless this requirement is dispensed). In most cases, this means that the Catholic party is to marry in the presence of a duly appointed priest or deacon. The presence of this official is required for validity.
 - a) Therefore, if two Catholics marry in front of a justice of the peace or Unitarian minister, this is not a valid marriage. No marriage exists in God's eyes. Similarly if a Catholic marries a non-Catholic without a dispensation in front of an official unauthorized by the Church (like an ex-priest or Methodist minister, etc.), this is also an invalid marriage.
 - b) Non-Catholics — either baptized non-Catholics or unbaptized persons — are not bound to the form of marriage. In other words, they do not have to exchange their consent in the presence of a Catholic official.

- 1) The Catholic Church considers marriages of baptized Protestants to be valid marriages.
 - 2) Two Lutherans marrying in front of a Lutheran minister, both of whom accept the goods and essential properties of marriage and exchange true consent, are married sacramentally.
 - 3) Two Jews marrying in front of a rabbi, again accepting the goods and essential properties of marriage and exchange true consent, enter into a good and natural marriage.
 - 4) Once the Catholic Church recognizes a marriage as a valid sacrament or as a good and natural marriage, any question of invalidity must come before a Church tribunal if a Catholic is involved in a subsequent attempt at marriage. Since every marriage is indissoluble, the bride and groom are bound to their prior unions, regardless of a civil divorce. (On average, nearly 20 percent of formal marriage cases pending before Church tribunals pertain to either sacramental marriages of baptized non-Catholics or good and natural marriages.)
- 6) Catholics who want to marry baptized non-Catholics must get special permission from their bishop do so. Without such permission, there cannot be a valid marriage. This is called a “mixed-marriage.”

Canon 1059: Even if only one party is Catholic, the marriage of Catholics is regulated not only by divine law but also by canon law, with due regard for the competence of civil authority concerning the merely civil effects of such a marriage.

Canon 1124: Without the express permission of the competent authority, marriage is forbidden between two baptized persons, one of whom was baptized in the Catholic Church or received into after baptism and has not left it by a formal act, and the other of whom is a member of a church or ecclesial community which is not in full communion with the Catholic Church.

- a) The Church recognizes that there are great difficulties in a marriage in which two people do not share the same faith. Her pastoral practice here is meant to protect the faith of the Catholic party and the children brought into life through the union.

CCC 1634: Difference of confession between the spouses does not constitute an insurmountable obstacle for marriage, when they succeed in placing in common what they have received from their respective communities, and learn from each other the way in which each lives in fidelity to Christ. **But the difficulties of mixed marriages must not be underestimated.** They arise from the fact that the separation of Christians has not yet been overcome. **The spouses risk experiencing the tragedy of Christian disunity even in the heart of their own home.**

- b) The local ordinary can grant permission for Catholics to marry baptized non-Catholics when three conditions are met:

Canon 1125: The local ordinary can grant this permission if there is a just and reasonable cause; he is not to grant it unless the following conditions have been fulfilled:

- 1) the Catholic party declares that **he or she is prepared to remove dangers of falling away from the faith and makes a sincere promise to do all in his or her power to have all the children baptized and brought up in the Catholic Church;**
- 2) the other party is to be informed at an appropriate time of these promises which the Catholic party has to make, so that it is clear that the other party is truly aware of the promise and obligation of the Catholic party;
- 3) both parties are to be instructed on the essential ends and properties of marriage, which are not to be excluded by either party.

- c) There are also conditions placed upon the place of marriage in such a circumstance:

Canon 1118: §1. Marriage between Catholics or between a Catholic and a baptized non-Catholic party is to be celebrated in a parish church; with the permission of the local ordinary or the pastor, it can be celebrated in another church or oratory. §2. The local ordinary can permit marriage to be celebrated in some other suitable place. §3. Marriage between a Catholic party and a non-baptized party can be celebrated in a church or in some other suitable place.

Canon 1127: §1. The prescriptions of can. 1108 are to be observed concerning the form to be employed in a mixed marriage; if a Catholic party contracts marriage with a non-Catholic of an oriental rite, the canonical form of celebration is to be observed only for liceity; for validity, however, the presence of a sacred minister is required along with the observance of the other requirements of law. §2. If serious difficulties pose an obstacle to the observance of the canonical form, the local ordinary of the Catholic party has the right to dispense from the form in individual cases, but after consulting the ordinary of the place where the marriage is to be celebrated and with due regard, for validity, for some public form of celebration; the conference of bishops is to issue norms by which such a dispensation may be granted in an orderly manner. §3. Before or after the canonical celebration held in accord with the norm of §1, it is forbidden to have another religious celebration of the same marriage to express or renew matrimonial consent; it is likewise forbidden to have a religious celebration in which a Catholic and a non-Catholic minister, assisting together but following their respective rituals, ask for the consent of the parties.

- 7) All of these considerations and more apply to the situation when a Catholic wants to marry an unbaptized person. This is called a “disparity of cult.”

- a) There’s a particular difficulty for a Catholic in marrying a complete non-believer.

CCC 1634: Disparity of cult can further aggravate these difficulties [which Catholics in mixed marriages experience]. Differences about faith and the very notion of marriage, but also different religious mentalities, can become sources of tension in marriage, especially as regards the education of children. The temptation to religious indifference can then arise.

CCC 1637 In marriages with disparity of cult the Catholic spouse has a particular task: "For the unbelieving husband is consecrated through his wife, and the unbelieving wife is consecrated through her husband." It is a great joy for the Christian spouse and for the Church if this "consecration" should lead to the free conversion of the other spouse to the Christian faith. Sincere married love, the humble and patient practice of the family virtues, and perseverance in prayer can prepare the non-believing spouse to accept the grace of conversion.

b) A particular dispensation from the bishop is needed for the validity of a marriage.

CCC 1635: In case of disparity of cult an express dispensation from this impediment is required for the validity of the marriage. This permission or dispensation presupposes that both parties know and do not exclude the essential ends and properties of marriage and the obligations assumed by the Catholic party concerning the baptism and education of the children in the Catholic Church.

Canon 1118: §3. Marriage between a Catholic party and a non-baptized party can be celebrated in a church or in some other suitable place.

8) Marriages with a defect in the proper form are invalid.

a) Catholics are bound to follow the proper form of celebration for the marriage to be valid.

b) The form may be defective in either of two ways:

1) The ceremony was celebrated without at least two witnesses.

2) The priest, deacon or layperson who asked for and received the consent of the parties was not duly qualified to do so (because he did not have the proper delegation or faculties to celebrate a wedding in a particular church on a particular day).

9) Marriages that have a lack of form are also invalid.

a) A lack of form case is different from a defect of form case.

1) In a defect of form case, the form was present but defective in some manner (like the two examples given above).

2) In a lack of form case, the form was never present. Such a designation implies a complete lack of canonical form on the wedding day. (This would occur, for example, if two Catholics tried to get married in front of a justice of the peace).

b) A lack of form case is not judicial in nature, but, rather administrative.

1) In judicial cases, the legal presumption is that the marriage in question is valid. As there is no presumption of validity in a lack of form case, there is no presumption in law to overturn.

2) Documents can prove that part(ies) legally bound to follow the form of marriage did not marry in accord with the requisite form.

3) Since they omitted the proper form, the marriage was never valid in the Church. Since there is no valid marriage, neither party is therefore bound to the union. They are free to marry anyone, at any time, in the Church (within the confines of Church law).

4) To process a lack of form case, the petitioner needs to produce three documents:

a) The primary document is a recent baptismal certificate verifying the Catholic baptism of at least one of the parties. This substantiates that at least one party was bound by law to follow the proper form of marriage. It also verifies that the civil marriage in question was never subsequently validated, or blessed, in a Church ceremony.

b) The first civil document is a marriage certificate, which verifies that the officiant was not authorized by the Church to assist at the wedding;

c) The second civil document is the divorce decree, which indicates that the union has been civilly dissolved.

5) Once it has been established through these documents that the proper form of marriage had not been observed, either party is then free to marry in the Church. This process can often be accomplished within a few weeks.

10) Convalidation

a) A couple may think that they are happily married and suddenly discover that their marriage is indeed invalid in law, either through recognition that they were married out-of-the-church and hence weren't married at all,

or because they become aware of an impediment on the day of their wedding, or some deficiency in their consent on the day of their wedding, or some deficiency in the form of their wedding.

- b) Whatever the reason, and presuming any impediment is dispensed or no longer in effect, the marriage can be made valid through a process called “convalidation.” To convalidate a marriage means to make an invalid marriage valid.
- c) There are two types of convalidation:

1) Simple convalidation

- a) This occurs when one or both of the parties are “aware” of the invalidity.
- b) This process requires the renewal of consent by at least one of the parties.

Canon 1159: §1. A marriage which is invalid due to a defect of consent is convalidated when the party who had not consented now gives consent, provided the consent given by the other party still exists. §2. If the defect of consent cannot be proven it is sufficient that the party who did not consent gives consent privately and in secret. §3. If the defect of consent can be proven it is necessary that the consent be given according to the canonical form.

Canon 1160: With due regard for the prescription of can. 1127, §2, marriage which is invalid due to a defect of form must be contracted anew according to canonical form in order to become valid.

2) Radical sanation or retroactive convalidation

Canon 1161: §1. The radical sanation of an invalid marriage is its convalidation without the renewal of consent, granted by competent authority and including a dispensation from an impediment, if there was one, and from the canonical form, if it was not observed, and the retroactivity into the past of canonical effects. §2. The convalidation occurs at the moment the favor is granted; it is understood to be retroactive, however, to the moment the marriage was celebrated unless something else is expressly stated. §3. A radical sanation is not to be granted unless it is probable that the parties intend to persevere in conjugal life.

Canon 1165: §1. Radical sanation can be granted by the Apostolic See. §2. In individual cases radical sanation can be granted by the diocesan bishop, even if several reasons for nullity exist in the same marriage, provided the conditions mentioned in can. 1125 concerning the sanation of a mixed marriage are fulfilled. The diocesan bishop cannot grant radical sanation, however, if there is present an impediment whose dispensation is reserved to the Apostolic See in accord with can. 1078, §2, or if it is a question of an impediment of the natural law or of the divine positive law which has ceased to exist.

- a) The Church grants this for serious reasons.
- b) There is no need for a renewal of consent by the parties, because their consent on the wedding day is not called into question. Yet even though the consent was not defective, the manifestation of consent on the wedding day was defective, rendering marriage invalid.
- c) The parties may or may not be aware of the legal defect.

Canon 1164: A sanation can be granted validly even when one or both of the parties are unaware of it, but it is not to be granted except for serious reason.

- d) Such defects occurring on the wedding day include:

1) An undispensed impediment that rendered the parties unqualified in law to place consent;

Canon 1163: §1. A marriage which is invalid due to an impediment or due to defect of legitimate form can be sanated provided the consent of each party continues to exist. §2. A marriage which is invalid due to an impediment of the natural law or of divine positive law can be sanated only after the impediment has ceased to exist.

2) The couple did not observe the proper canonical form of marriage; or

3) A defect of form.

- e) The use of a retroactive convalidation presumes the consent of the parties was not defective in any manner on the wedding day. The couple still considers themselves married when the favor (sanation) is granted.
- f) When the sanation is granted, the invalid marriage becomes valid in law from the day of the wedding ceremony — hence the term *retroactive convalidation*.
- g) An example would be if a Catholic married someone who hated the Church in front of a justice of the peace. The marriage could be convalidated retroactively for the well-being of the Catholic who wishes to receive holy communion but cannot, because she is living in a union not recognized by the Church.

- h) Another example would be if a priest neglected to apply for a dispensation from an impediment so that a particular couple could marry validly. The couple could even be unaware of this. The marriage would be invalid, but the priest could apply for a retroactive convalidation without either party's knowing that this negligence had occurred. The granting of this favor in this instance would prevent the scandal involved if the circumstances of the priest's negligence became known.
- i) It is absolutely required, in such a case, that the consent of the parties perdure at the time of the sanation, since consent makes marriage.

Canon 1162: §1. A marriage cannot be radically sanated if consent is lacking in either or both of the parties, whether the consent was lacking from the beginning or was given in the beginning but afterwards revoked. §2. If, however, consent was indeed lacking in the beginning but afterwards was given, a sanation can be granted from the moment the consent was given.

D) Who is capable according to law of giving consent?

- 1) All persons who are not prohibited by law can contract marriage (canon 1058)
- 2) People who are prohibited by law are said to have an impediment to marriage, which prevents them from marrying validly (in other words, marrying at all in the eyes of God). There are two types of impediments:
 - a) Impediments of divine or natural law (these bind every one, Catholics and non-Catholics, and can never be dispensed)

1) Too close consanguinity

Canon 1091: §1. In the direct line of consanguinity, marriage is invalid between all ancestors and descendants, whether they be related legitimately or naturally. 2. In the collateral line of consanguinity, marriage is invalid up to and including the fourth degree. §3. The impediment of consanguinity is not multiplied. §4. If there exists any doubt whether the parties are related through consanguinity in any degree of the direct line or in the second degree of the collateral line, marriage is never permitted.

- a) The direct line of consanguinity means from mother-father to son-daughter. So a grandfather could never marry his granddaughter, or Oedipus could never have validly married his mother.
- b) The collateral line of consanguinity means, up to the fourth line, means that the following relatives cannot marry each other:
 - a) brothers and sisters
 - b) aunt-nephew, great uncle-great niece, and first cousins

2) antecedent and perpetual impotence

Canon 1084: §1. Antecedent and perpetual impotence to have intercourse, whether on the part of the man or of the woman, which is either absolute or relative, of its very nature invalidates marriage. §2. If the impediment of impotence is doubtful, either by reason of a doubt of law or a doubt of fact, a marriage is neither to be impeded nor is it to be declared null as long as the doubt exists. §3. Sterility neither prohibits nor invalidates marriage, with due regard for the prescription of can. 1098 [which concerns fraud].

- a) Potency for the man includes
 - 1) The erection of the penis
 - 2) Its penetration into the vagina
 - 3) Ejaculation within the vagina
- b) Potency for the woman includes
 - 1) The possession of the vagina
 - 2) The capacity of the vagina to receive the penis into it.
- c) If any of these essential requirements of potency is absent, then the impediment of impotence exists.
- d) This impediment is based in the laws of nature, as impotence is the incapacity to perform sexual intercourse in the natural way.
- e) In order to invalidate marriage, the law requires that
 - 1) the impotence existed at the time of the marriage ceremony, that is, it did not come about after the wedding; and
 - 2) It is "legally perpetual," meaning that it cannot be cured or overcome.

- f) Invalidating impotence can be absolute (when a person is impotent with any person of the opposite sex) or relative (when there is a gross disproportion in size between the sexual organs of the man and woman, or because of some psychological factor).

3) current marriage bond

Canon 1085: §1. A person who is held to the bond of a prior marriage, even if it has not been consummated, invalidly attempts marriage. §2. Even if the prior marriage is invalid or dissolved for any reason whatsoever, it is not on that account permitted to contract another before the nullity or the dissolution of the prior marriage has been legitimately and certainly established.

b) Impediments of church law (which bind Catholics and can be dispensed under certain conditions)

1) Age — 16 for men; 14 for women

Canon 1083: §1. A man before he has completed his sixteenth year of age, and likewise a woman before she has completed her fourteenth year of age, cannot enter a valid marriage. §2. It is within the power of the conference of bishops to establish an older age for the licit celebration of marriage.

- a) A marriage between two 10-year olds is invalid.
- b) There is here an admittance that a certain maturity is necessary to enter into marriage, a maturity greater than which is presumed at puberty.
- c) The bishops of a country or a region can establish a higher age as a requirement for marriage, but if this higher age is not observed, the marriage would only be illicit, not invalid.

2) sacred orders — bishops, priests, deacons

Canon 1087: Persons who are in (major) holy orders invalidly attempt marriage.

- a) Every cleric in major orders at his diaconal ordination (or at his subdiaconate ordination for those ordained before 1972) has promised to live a celibate life for the sake of the kingdom of God. He is bound to his promise.
- b) In order to marry, such a person would need to obtain (1) a decree of laicization from the Holy Father (which frees him from the obligations associated with the ordained ministry, like praying the Liturgy of the Hours five times a day), (2) a dispensation from his promise of celibacy, and (3) a dispensation from the impediment.

3) profession of a public perpetual vow of chastity in a religious institute

Canon 1088: Persons who are bound by a public perpetual vow of chastity in a religious institute invalidly attempt marriage.

- a) Every word here is important. Not all vows of chastity render one incapable of marriage.
 - 1) The vow has to be made publicly — a private vow of chastity does not render one canonically incapable of marriage.
 - 2) It has to be a perpetual vow (taken until death) not a temporary one.
 - 3) It has to be made in a religious institute, not in other institutes of consecrated life.
- c) As with those in sacred orders, those who have promised to live a chaste celibate life for the sake of the kingdom of God are bound to their promises.
- b) If one is dispensed from the vow (by the bishop for a religious institute of diocesan right or by the pope for an institute of pontifical right) then one is no longer bound by the vow and hence is also no longer bound by the impediment.

4) marriage to an unbaptized person (disparity of cult)

Canon 1086: §1. Marriage between two persons, one of whom is baptized in the Catholic Church or has been received into it and has not left it by means of a formal act, and the other of whom is non-baptized, is invalid. §2. This impediment is not to be dispensed unless the conditions mentioned in cann. 1125 and 1126 are fulfilled. §3. If at the time the marriage was contracted one party was commonly considered to be baptized or the person's baptism was doubted, the validity of the marriage is to be presumed in accord with the norm of can. 1060 until it is proven with certainty that one party was baptized and the other was not.

Canon 1125: The local ordinary can grant this permission if there is a just and reasonable cause; he is not to grant it unless the following conditions have been fulfilled: (1) the Catholic party declares that he or she is prepared to remove dangers of falling away from the faith and makes a sincere promise to do all in his or her power to have all the children baptized and brought up in the Catholic Church; (2) the other party is to be informed at an appropriate time of these promises which the Catholic party has to make, so that it is clear that the other

party is truly aware of the promise and obligation of the Catholic party; (3) both parties are to be instructed on the essential ends and properties of marriage, which are not to be excluded by either party.

5) abduction

Canon 1089: No marriage can exist between a man and a woman abducted or at least detained for the purpose of contracting marriage with her, unless the woman of her own accord chooses marriage after she has been separated from her abductor and established in a place where she is safe and free.

- a) Abduction and detention involve two different types of violence against women, physical (by being locked somewhere she does not want to be) or moral (by being pressured by threats to consent to marriage). If anyone is married under such circumstances, the marriage is invalid.
- b) The impediment ceases to exist when the woman has separated from her abductor and is in a safe, secure and free place. Since the law stipulates the cessation of the impediment, it would be illogical to request or grant a dispensation from it.

6) coniugicide

Canon 1090: §1. A person who for the purpose of entering marriage with a certain person has brought about the death of that person's spouse or one's own spouse, invalidly attempts such a marriage. §2. They also invalidly attempt marriage between themselves who have brought about the death of the spouse of one of them through mutual physical or moral cooperation.

- a) This impediment involves the crime of killing someone in order to marry that person's spouse.
- b) Since murder is the cause of the impediment, the act must be completed and not merely attempted.
- c) There are two scenarios related to the impediment of crime:
 - 1) The murder is committed against the person's present spouse for the purpose of marrying another;
 - 2) The murder is committed against the other's spouse for the purpose of marriage.
- d) Murder for financial reasons, self-defense, or any other reason does not bring about the impediment of coniugicide (§1) but it does incur the penalty of crime (§2).
- e) When the murder is committed personally or through the agency of others, the guilty party is rendered incapable of marriage.
- f) The impediment bars the marriage between the murderer and the intended — the murderer is free to marry anyone else.
- g) The impediment is incurred whether or not the intended future spouse knows about it or not.
- h) Any dispensation from this impediment is reserved to the pope.

7) certain degrees of affinity

Canon 1092: Affinity in the direct line in any degree whatsoever invalidates matrimony.

- a) A step-father may not marry his step-daughter or a step-mother her step-son.

8) public propriety in certain concubinage relationships

Canon 1093: The impediment of public propriety arises from an invalid marriage after common life has been established or from notorious and public concubinage; it invalidates marriage in the first degree of the direct line between the man and the blood relatives of the woman, and vice-versa.

- a) If two people live together for a long time (who are either in an invalid marriage or who are simply living together), something similar to the impediment of affinity exists.
- b) Thus, the man may not marry the daughter of his female lover, or the woman the son or her may lover.

9) certain adoptive relationships

Canon 1094: They cannot validly contract marriage between themselves who are related in the direct line or in the second degree of the collateral line through a legal relationship arising from adoption.

- a) Children who have been adopted in civil law are considered to be the children of the adoptive parents in canon law.
 - b) Thus, a man may not marry his adopted daughter, or a mother her adopted son; similarly a natural son may not marry his adopted sister or two adopted children may not marry each other.
- 3) All the faithful are obliged to reveal any impediments they are aware of to the pastor or to the local ordinary before the celebration of marriage (canon 1069).
- 4) How can one get a dispensation from ecclesiastical impediments to marriage?

Canon 1078: §1. The local ordinary can dispense his own subjects wherever they are staying as well as all persons actually present in his own territory from all the impediments of ecclesiastical law with the exception of those impediments whose dispensation is reserved to the Apostolic See.

§2. A dispensation from the following impediments is reserved to the Apostolic See: (1) the impediment arising from sacred orders or from a public perpetual vow of chastity in a religious institute of pontifical right; (2) the impediment of crime mentioned in can. 1090. §3. A dispensation is never given from the impediment of consanguinity in the direct line or in the second degree of the collateral line.

- 5) What if a couple becomes aware that they have an impediment and it's on the eve of the wedding?

Canon 1080: §1. Whenever an impediment is discovered after all the wedding preparations are made and the marriage cannot be deferred without probable danger of serious harm until a dispensation can be obtained from competent authority, the following persons enjoy the faculty to dispense from all the impediments with the exception [of the impediment arising from sacred orders or from a public perpetual vow of chastity in a religious institute of pontifical right]:

- a) the local ordinary and, as long as the case is an occult one,
- b) [when the ordinary cannot be contacted] the pastor, the properly delegated sacred minister and the priest or deacon who assists at matrimony also possess the faculty to dispense from the same impediments.

- 6) If a couple becomes aware after their wedding that their wedding took place with the presence of an impediment that had not been dispensed — and hence that they had no marriage, that their marriage was null and void from the beginning — can then come for a convalidation (get their marriage blessed by the Church)?

- a) To convalidate a marriage which is invalid due to a diriment impediment, it is required that the impediment cease or that it be dispensed and that at least the party who is aware of the impediment renew consent (Canon 1156, §1);
- b) This renewal of consent is required by ecclesiastical law for the validity of the convalidation even if both parties furnished consent at the beginning and have not revoked it later (Canon 1156, §2);
- c) The renewal of consent must be a new act of the will concerning a marriage which the person who is renewing consent knows or thinks was null from the beginning (Canon 1157);
- d) If the impediment is a public one, the consent is to be renewed by both parties according to the canonical form, with due regard for the prescription of can. 1127, §2 [i.e., If serious difficulties pose an obstacle to the observance of the canonical form, the local ordinary of the Catholic party has the right to dispense from the form in individual cases, but after consulting the ordinary of the place where the marriage is to be celebrated and with due regard, for validity, for some public form of celebration; the conference of bishops is to issue norms by which such a dispensation may be granted in an orderly manner.] (Canon 1158, §1).
- e) If the impediment cannot be proven to exist, it is sufficient that the consent be renewed privately and in secret by the party who is aware of the impediment, provided the other party perseveres in the consent already given, or by both parties when each of them knows about the impediment (Canon 1158, §2).

III. Consummation of the marriage

- 1) A valid marriage is brought about through the consent of the parties, legitimately manifested between persons who are capable according to law of giving consent (canon 1057).
- 2) A valid marriage is considered consummated when the husband and wife make love in a human way (strictly speaking, open to life, i.e., without a condom). Such a marriage would be called in canon law, ratum et consummatum.

Canon 1061: §1. A valid marriage between baptized persons is called ratified only if it has not been consummated; it is called ratified and consummated if the parties have performed between themselves in a human manner the conjugal act which is per se suitable for the generation of children, to which marriage is ordered by its very nature and by which the spouses become one flesh. §2. After marriage has been celebrated, if the spouses have cohabited consummation is presumed until the contrary is proven. §3. An invalid marriage is called putative if it has been celebrated in good faith by at least one of the parties, until both parties become certain of its nullity.

- 3) A ratified and consummated sacramental marriage cannot be dissolved by any human power or for any reason other than death (canon 1141). This is based on the teaching of Jesus:

Mt 19:3 Some Pharisees came to him, and to test him they asked, "Is it lawful for a man to divorce his wife for any cause?" 4 He answered, "Have you not read that the one who made them at the beginning 'made them male and female,' 5 and said, 'For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh'? 6 So they are no longer two, but one flesh. Therefore what God has joined together, let no one separate." 7 They said to him, "Why then did Moses command us to give a certificate of dismissal and to divorce her?" 8 He said to them, "It was because

you were so hard-hearted that Moses allowed you to divorce your wives, but from the beginning it was not so. 9 And I say to you, whoever divorces his wife, except for unchastity, and marries another commits adultery.”

- 4) A non-consummated marriage between baptized persons or between a baptized party and non-baptized party can be dissolved by the Roman Pontiff for a just cause, at the request of both parties or of one of the parties, even if the other party is unwilling (canon 1142). This is called the **Petrine privilege**.

IV. Dissolution of a good and natural marriage

- 1) A valid and consummated sacramental marriage can never be dissolved by any human power for any reason other than death (canon 1141).
- 2) A valid and consummated non-sacramental marriage — called a good and natural marriage — can be dissolved (which is different than being declared null) in order to allow an individual to practice Christianity.
- 3) This is called a **Pauline privilege**, which is rooted in the writing and practice of St. Paul:

1Cor. 7:12 To the rest I say — I and not the Lord — that if any believer has a wife who is an unbeliever, and she consents to live with him, he should not divorce her. 13 And if any woman has a husband who is an unbeliever, and he consents to live with her, she should not divorce him. ... 15 But if the unbelieving partner separates, let it be so; in such a case the brother or sister is not bound. It is to peace that God has called you.

- 4) The Church’s pastoral practice has seen, particularly in polygamous cultures, that it is very difficult for people after having converted to Christ in the Church to practice and grow in their faith if their spouses constantly oppose them. Moreover in several cultures if a woman abandons her husband to practice her faith, she is vulnerable to all types of very serious problems. Recognizing this — and also recognizing that the non-Christian spouse had not consented to marrying a Christian spouse — the Church has dissolved these good and natural marriages in order to strengthen the faith of the newly baptized.
- 5) The Pauline privilege concerns a marriage between two unbaptized persons with the subsequent desire of conversion for one of the parties. When one of the parties to a good and natural marriage receives baptism and the other party leaves the marriage with no intention of returning (otherwise baptism could be used as an excuse for dissolution), the Pauline privilege may be invoked. The good and natural marriage is dissolved when the party who has been baptized contracts a new valid marriage.
- 6) There are several relevant canons:

Canon 1143: §1. A marriage entered by two non-baptized persons is dissolved by means of the pauline privilege in favor of the faith of a party who has received baptism by the very fact that a new marriage is contracted by the party who has been baptized, provided the non-baptized party departs. §2. The non-baptized party is considered to have departed if he or she does not wish to cohabit with the baptized party or does not wish to cohabit in peace without insult to the Creator unless, after receiving baptism, the baptized party gave the other party a just cause for departure.

Canon 1144: §1. In order for the baptized party to contract a new marriage validly, the non-baptized party must always be interrogated on the following points: (1) whether he or she also wishes to receive baptism; (2) whether he or she at least wishes to cohabit in peace with the baptized party without insult to the Creator. §2. This interrogation must take place after baptism; for a serious reason, however, the local ordinary can permit this interrogation to take place before the baptism, or even dispense from this interrogation either before or after the baptism, provided it is evident in light of at least a summary and extrajudicial process that it cannot take place or that it would be useless.

Canon 1146: The baptized party has the right to contract a new marriage with a Catholic party: (1) if the other party answered negatively to the interrogation or if the interrogation has been legitimately omitted; (2) if the non-baptized party, interrogated or not, at first peacefully cohabited without insult to the Creator but afterwards departed without a just cause, with due regard for the prescriptions of cann. 1144 and 1145.

Canon 1147: For a serious cause the local ordinary can permit the baptized party who employs the pauline privilege to contract marriage with a non-Catholic party, whether baptized or not, while observing the prescriptions of the canons of mixed marriages.
- 7) There is a second circumstance in which a good and natural marriage can be dissolved by the Pope by a privilege in **favor of the faith**. This would happen, for example, in the case of a Catholic who wanted to marry a Lutheran woman who was divorced from a Buddhist man. The Catholic man could petition the pope to dissolve the woman’s good and natural marriage in “favor of the faith” of the Catholic. The underlying principle of the favor of the faith is the Catholic’s ability to practice the faith.

Canon 1150: In a doubtful matter the privilege of the faith enjoys the favor of the law.

V. Process of petitioning for a declaration of nullity

- 1) The Church court system
 - a) Understanding the process of petitioning for a declaration of nullity requires some understanding of the ecclesiastical judicial system. Like civil law, there is an ecclesiastical court system. This ultimately has its roots in

the mandate of Christ to his bishops to be judges, but also has historical grounding when Constantine made the bishops civil magistrates to settle cases between Christians (early 300s).

b) Church courts are called tribunals — from the Latin word for the platform where a judge would sit.

c) All of the Christian faithful — in fact, even non-Christians — have access to the courts to vindicate and defend their rights.

d) There are three levels of Church courts in law:

a) Diocesan tribunal

1) The bishop is the chief judge (as he is the chief legislator and executive)

2) A bishop normally appoints a judicial vicar, a priest, to act in his stead as presiding judge in typical cases that come before the Church court.

3) A tribunal is also composed of:

a) judges

1) These are usually clerics, but also, with the permission of episcopal conferences, religious or lay men and women who have a degree in canon law.

2) The judge's primary duties is to hear and decide cases as quickly as possible and to ensure the procedural rights of parties.

3) His ultimate responsibility is to issue a sentence that decides a case. He pronounces on the nullity of a marriage in a "formal sentence," giving an orderly and logical argument that explains how the decision was determined on the basis of the law.

b) advocates

1) These are appointed by the bishop. They are essentially the equivalent of lawyers, who protect the rights of the petitioner and respondent by working on their behalf.

2) An advocate may be a man or woman at least 18 years of age with a good reputation in the community and regarded as an "expert" in canon law, though an academic degree is not required. This person should also preferably be a Catholic.

3) Most tribunals normally have a list of approved advocates, and these individuals are available to the parties. If a party wishes to appoint an advocate who is not on the approved list, this request may be made to the bishop.

4) The advocate is appointed to the case by the party, not the court. Normally the petitioner and respondent appoint their advocates from the approved diocesan list during the initial phase of the tribunal investigation by signing a decree of appointment called a mandate, which commissions the advocate to work on their behalf. Strictly speaking, an advocate is optional.

5) The advocate has various roles throughout the tribunal investigation. He may be present when the parties, witnesses or experts give testimony, and he may inspect all of the testimony once it has been submitted. However, one of his most important roles is to write a "legal brief" on behalf of his party and submit this to the judge for consideration, in which he emphasizes everything relative to his client's position in the case (nullity for the petitioner, or the validity of the bond for an opposed respondent).

6) The advocate seeks the truth, not the client's interests at all costs. Therefore, deceptive, though skillful, argumentation has no place in a tribunal investigation regarding marriage.

c) procurators

1) Another name for a procurator is a proxy.

2) This court official is commissioned by the petitioner or respondent to perform judicial acts in his or her name. This official is a person's personal representative to the court.

- 3) Like the advocate, the procurator works before the court, and, as such, is not an instrument of the court.
- 4) Most tribunals have a list of approved procurators, who are most often paid by the tribunal and made available to the parties. A procurator may be a man or a woman — the only legal qualifications for this official are that he or she is at least 18 and has a good reputation.
- 5) As with an advocate, the petitioner and respondent must commission the procurator to act on their behalf by virtue of a signed mandate. However, this appointment is optional; neither the petitioner nor the respondent must commission a procurator.
- 6) In some cases, the party may commission the same person to be both procurator and advocate. This official is then known as the procurator-advocate.
- 7) The procurator may be present at the examination of the witnesses, but the primary role of the procurator is to perform specified legal actions on behalf of the party at different phases of the investigation. The principal action a procurator can perform on behalf of the party is to appeal the judge's sentence.
- 8) Even though the procurator works on behalf of a party, like other officials of the court, his or her ultimate interest is the truth.

d) defenders of the bond

- 1) Unlike the advocate and procurator, the defender of the bond of marriage is an officer of the court who acts on behalf of the court. He is appointed by the bishop.
- 2) The defender is bound by office to propose and clarify everything that can reasonably be adduced against a declaration of nullity. He “defends” the validity of the “bond of marriage” in question.
- 3) Defenders of the bond may be clerics women and men religious and lay women and men. They must have a good reputation, hold a degree in canon law and exhibit both prudence and a zeal for justice.
- 4) The defender ensures that the rights of both parties are upheld, examines the testimonies in a case, pointing out to the judge(s) contradictions between testimonies or gaps between the testimony of one person vis-a-vis another person. He highlights for the judge facts or statements that undermine or weaken the petition for nullity. He may suggest that the judge question the parties and witnesses about specific matters; he may also be present when the witnesses are examined. If the case is decided in the affirmative — that there was no marriage — the defender may appeal this decision.
- 5) After all of the testimony in the case has been presented, the principal role of the defender is to argue reasonably for the validity of the “bond of marriage.” This is principally accomplished through the defender's written legal brief, which is submitted to the judge(s).
- 6) As with the other officials in the tribunal investigation, the ultimate goal of the defender's activity is the search for truth. Therefore, he is not obliged to defend the marriage bond in question at any cost. In the interest of truth and after a diligent, accurate and conscientious examination of all the testimonies, the defender may find no reasonable objection to the petition for nullity. The defender does not have to devise an artificial argument in a case that clearly suggests invalidity; he may simply state he has no reasonable objections. Ultimately, the defender of the bond of marriage serves the search for truth.

e) and other personnel (expert witnesses — psychiatrists, psychologists — secretarial personnel, etc.)

- 4) A typical case can be heard by one judge (in which case the judge would have to be a priest), a panel of three judges (in which two of the members must be clerics) or a panel of five judges.
 - a) The petitioners and respondents cannot choose their judges, but they may object to a judge assigned by rotation to the case to the judicial vicar or to the bishop.
 - b) If the objection is valid, the official is removed immediately from the case.

- b) A regional or metropolitan tribunal (comprising a number of dioceses), which is normally a Court of Appeal comprised of judges.
 - c) The tribunals of the Holy See, which consists of the Roman Rota (the highest appeals court in the Church) and the Apostolic Signatura, which has universal oversight for the judicial structures of the Church on behalf of the Holy Father.
- e) A particular diocesan tribunal has to have jurisdiction or competence to hear a case. For example, some cases can only be heard by the tribunals of the Holy See:
- Canon 1405: §1. It is the right of the Roman Pontiff himself alone to judge in cases mentioned in can. 1401: (1) those who hold the highest civil office in a state; (2) cardinals; (3) legates of the Apostolic See and, in penal cases, bishops; (4) other cases which he has called to his own judgment. §3. Judgment of the following is reserved to the Roman Rota: (1) bishops in contentious cases, with due regard for the prescription of can. 1419, §2; (2) an abbot primate or an abbot superior of a monastic congregation and the supreme moderator of religious institutes of pontifical right; (3) dioceses or other ecclesiastical persons, whether physical or juridic, which do not have a superior below the Roman Pontiff.
- f) In marriage cases not reserved to the Holy See (for example, those of heads of state), canon law says a court or tribunal is competent to hear a case if it is the diocesan court (canon 1673):
- 1) Where the marriage occurred;
 - 2) Where the respondent (the presumed spouse of the petitioner) lives;
 - 3) Where the petitioner lives (with the permission of the respondent's judicial vicar, who has to live within the same episcopal conference); or
 - 4) Where most of the testimonies will be collected (with the permission of the respondent's judicial vicar, who has to live within the same episcopal conference).

2) Participating in the Tribunal investigation — the process

- a) Now that we have some clue about the set-up of the ecclesiastical court system, we can proceed to specific questions involved in the process of a petition for nullity.
- b) There is a clear process involved in a petition for nullity, with time limits, rights and duties, etc. It is a process aimed at a judgment of whether a marriage took place or not on the day the wedding happened. The presumption on the part of the Church is that marriage enjoys the favor of the law — in other words, that a marriage exists when a wedding takes place. The burden of proof, therefore, is on the one who petitions for a declaration of nullity. The petitioner has to prove that a marriage did not occur.

Canon 1060: Marriage enjoys the favor of the law; consequently, when a doubt exists the validity of a marriage is to be upheld until the contrary is proven.

c) The petitioner

- 1) A tribunal investigation cannot begin unless a person brings a case before a judge. In regard to marriage, either spouse has the right to “petition” the Church for a declaration of nullity — but only these two have such a right.
- 2) The spouse is seeking to have his or her marriage declared invalid (null). The law presumes that the petitioner is married, regardless of a civil divorce; however, the petitioner believes that the marriage is invalid and thus contends that he or she is unmarried, that is, single.
- 3) The petitioner's question concerning the validity of the marriage ultimately questions his or her legal status in the Church. If the marriage is declared null, the parties are not bound to a union; both parties would be legally unmarried, and so are free to marry at any time.
- d) Due to Church/state issues as well as concerns over civil litigation for alienation of affection, most tribunals in the United States will not accept a petition unless there has been a civil divorce. As such any divorced person has the right to petition the Church for a declaration of nullity (but is not entitled to receive an affirmative response from the court!).
- e) Tribunals across the country vary in the manner in which they accept petitions for a declaration of nullity.
 - 1) A petitioner either relates the history of the marital relationship to the court in written form or through verbal testimony. This history includes a complete account of the family backgrounds of each party, their courtship, wedding, marital life and separation(s).

- 2) In view of this testimony the court will determine if the petition should be accepted and on what ground(s) the petitioner has cause for a case.
- 3) The petitioner is then requested to sign a “formal petition,” in Latin *libellus*, to initiate the investigation. As the case proceeds the petitioner may be asked to clarify certain points or expand on areas that need elaboration.
- 4) The petitioner may appoint an advocate and a procurator to assist him or her during the tribunal process. The petitioner may review the material at the time of the publication of the acts and of the sentence and may appeal the final result if he or she is displeased with the outcome.

d) The respondent

- 1) The respondent is the other spouse to the marriage, who is notified by the court of the petition and asked to respond.
- 2) He or she must be contacted and the petitioner must present a current address or a “care of” address for their spouse. It is the tribunal’s responsibility to contact the respondent about the proceedings after having been supplied with an address; the petitioner is not obliged to do so, but in situations the parties are on relatively good terms, it may be prudent for the petitioner to inform the respondent ahead of time, to avoid any “surprise” and consequent hostility.
- 3) The respondent can respond to the citation in three ways:
 - a) Stating that he or she is opposed to the petition for nullity;
 - b) Stating that he or she is in favor of the petition for nullity;
 - c) Stating that he or she is indifferent to the petition and wishes no further contact, in which case the respondent effectively waives his or her rights throughout the investigation, with the exception of choosing to appeal the final sentence.
 - d) There is also an implicit fourth option, to ignore the citation altogether. The citation is normally made through USPS certified mail to ensure the respondent receives it. If there is no response from the respondent within the specified time of receipt, the judge may declare him absent from the proceedings and the judge would be free to omit all of the parts the respondent would play if he or she were participating in the process (except for appealing the final sentence, which in order to exercise this, the absent respondent would have to be able to show that there was a good reason for not appearing before this end point in the process).
- 4) If the respondent is truly unable to be located — and the petitioner in this case would have to prove to the court the various avenues that he or she has undertaken to find the respondent — the judge will appoint an officer of the court, a “legal representative,” to act in the respondent’s place.
- 5) The respondent may appoint an advocate and a procurator for assistance throughout the tribunal process — tribunals can facilitate these appointments. The respondent may also review the material at the publication of the acts and the sentence within the time periods specified in the law.

e) Witnesses

- 1) A witness is an individual who has been summoned by the court to testify to questions posed by the judge. The testimony of a witness is one source of proof to the court regarding the case.
- 2) Both the petitioner and the respondent can supply the court with names of witnesses. In addition, either party can object to a witness proposed by the other spouse, with the decision to exclude a witness belonging to the judge.
- 3) It is also the responsibility of the judge to curb an excessive number of witnesses. Most tribunals generally limit the number of witnesses that each spouse may present to three as a minimum and five as a maximum; a specific case, however, may warrant more than five witnesses. A valuable witness is one who knew the parties before and after the wedding day.

- 4) The operative legal presumption is that the marriage in question is valid. This presumption will yield to the contrary evidence only if such evidence exists. So the petitioner needs to present witnesses to substantiate his or her claim; likewise the opposed respondent should also present witnesses to counter the position of the petitioner and support the presumed validity of the marriage.
 - 5) Children under 14 and priests who have acted as confessors to either party are excluded. Anyone else who is bound by professional secrecy, such as bishops, priests, deacons, doctors, lawyers, etc., may be exempted. Moreover, anyone who fears a loss of reputation or dangerous reprisals by giving testimony, not only to themselves but also to anyone close to them, can be exempted. The judge decides this matter of exemption.
 - 6) Witnesses are examined individually, not as a group. The examination is conducted by the judge or duly appointed court official either through oral or written testimonies. The parties may not be present at this examination, though their advocates and procurators may be there. Aside from taking oral testimonies, some tribunals gather witness testimonies through sworn written affidavits. The judge evaluates the credibility of each witness's testimony in coming to his final decision.
- f) The five stages of a tribunal investigation concerning marriage:
- 1) The introduction of the case
 - a) A spouse initiates a case through a "formal petition." The tribunal officials determine the nature of the case. It may focus on the consent of the bride and groom, the legitimate manifestation of consent or the parties' qualifications to place consent. The judge determines the court's jurisdiction, the petitioner's standing in court and whether the case has merit. Then the citation of the respondent occurs and the judge fixes the legal ground(s) on which the case is to proceed.
 - b) The formal petition or libellus
 - 1) This is normally done through the cooperation of parish ministers, regional advocates or tribunal personnel. This usually involves an informal preliminary investigation before the petition is drawn up; such an investigation is not meant to determine the merits of the case, but to determine whether there might be solid grounds for a petition for nullity.
 - 2) The formal petition states the names of the spouses, the ground(s) upon which the case should be heard, the facts and proofs that will be used in general throughout the course of the investigation, the address of the respondent, the signature of the petitioner and the date the petition was submitted.
 - 3) The judge will accept or reject the petition by a decree. Normally petitions are accepted, although not always. The petition will be rejected if the judge or tribunal lacks the jurisdiction to hear the case, or if the judge determines it has no basis in law or no available proofs to back it up. If the petition is rejected by the judge, the petitioner has recourse to the higher authority as provided by law, who will either confirm the judge's decision or overturn it.
 - c) The citation of the respondent
 - 1) The court calls on the respondent to respond to the petitioner's plea before the court either in person or in writing. Once the citation of the respondent has occurred, the trial investigation has officially begun.
 - 2) The respondent has a right to defend the bond of marriage and his or her own rights. If the citation is omitted and the case moves to an affirmative sentence, the sentence itself will be declared invalid.
 - 3) Normally the "formal petition" is attached to the summons stating the ground(s) upon which the petitioner's plea is brought forth and it identifies how the case will be demonstrated by the petitioner. Yet the right of the respondent to see the petition at this introductory stage is not absolute, if the judge fears that the respondent will initiate a civil action of defamation against the petitioner or the Church or interfere with the witnesses and other proposed proofs. If the petition is withheld, the respondent's right of defense is not lost, because the summons will contain the reasons behind the petitioner's pleas. Additionally, the respondent will be given access to the "formal petition" later in the process during the publication of the acts.
 - d) This initial stage can take approximately 2-3 months.

- 2) The collection of testimonies
 - a) The petitioner and respondent present their respective declarations. The witnesses that they have named are contact for their testimonies. Expert witnesses may be called, such as mental health professionals or medical doctors. Documents may be requested, such as counselors' reports, hospital admissions paperwork or criminal records.
 - b) This stage usually takes the greatest amount of time — anywhere from 2-6 months.
- 3) The review of testimonies and the discussion among the court officials
 - a) After the testimonies have been collected, the "publication of the acts" occurs. After this publication, the party(ies) may propose additional proofs. When the parties have nothing more to add or their time to do so has expired, the collection of proofs is considered concluded. Then the parties' advocates and the defender of the bond of marriage present legal arguments to the judge(s). Traditionally, these arguments are in the form of written legal briefs, although they may be done orally. Through either means the officials highlight certain facts and circumstances of the case for the judge(s), so that the judge(s) may render a well-founded decision.
 - b) The publication of the acts
 - 1) This decree permits the petitioner and respondent and their advocates to inspect the testimonies at the tribunal. This general rule of inspection allows for the parties' right of defense; however, the judge may withhold a given act from anyone "in order to avoid very serious dangers," providing the right of defense remain intact. Both parties have a right to what the other has said in order to defend their own positions, although this must be balanced with the right to one's good reputation and privacy.
 - 2) The judge regulates the exercise of persons' rights in view of the common good at the time of the publication of the acts. He must provide for the right of defense while respecting confidentiality so that a person's right to a good reputation is not ruined. A judge may bind parties to an oath of secrecy in order to avoid dissension, scandal or the endangerment of a person's reputation. If testimony is withheld, the right of defense is still maintained, since the parties' advocates may perform a thorough review of the testimonies. In addition, the defender of the bond will also assess the material. This official's role is crucial, and it highlights the key focus of the investigation — the bond of marriage — not who is at fault for the failure of the relationship.
 - c) If, after the review of the evidence, the parties wish to add more testimonies or present new witnesses, they may make their requests known to the judge. After these additional testimonies have been assembled, it is left to the judge's discretion as to whether another review of testimony by the parties is necessary. When everything has been submitted, the collection of testimony is then concluded.
 - d) This stage can take from 1-3 months.
- 4) The decision or sentence of the judge(s)
 - 1) The judge(s) then renders a decision by means of a judicial sentence. The sentence states the basic facts of the case, such as an identification of the parties and the relevant facts and dates surrounding the marriage. It also presents the law and jurisprudence upon which the case is decided in the affirmative or in the negative. Lastly, it argues the facts of the case in light of the law. Once the sentence is issued by the judge(s), the "publication of the sentence" occurs.
 - 2) This single judgment, if in the affirmative, does not in itself declare that the marriage is null; a declaration of nullity is granted only after two affirmative judgments.
 - 3) The criterion for adjudication employed by the judge is "moral certainty." This is a legal term in the Church that falls between the extremes of absolute certainty and probability. On the one hand, it excludes a well-founded or reasonable doubt, and on the other hand, it admits to the possibility that the contrary may also be true.

- 4) This objective judgment is based on the testimonies in the case. It cannot be based upon the judge's opinion or upon private knowledge that has come to him from outside the official acts of the case. If the judge cannot come to moral certitude about nullity, the marriage remains valid in law.
 - 5) The judgment is to be published to the parties as soon as possible through a decree called the "publication of the sentence," which affords both parties the opportunity to appeal that decision, either to the ordinary regional court of appeals or to the Roman Rota. As with the publication of the acts, certain testimonies or facts may be withheld to protect someone's reputation.
 - 6) This stage can take approximately one month.
- 5) The appeal process
- 1) All judgments rendered in the Court of First Instance (the Diocesan tribunal) are forwarded or appealed to the next tribunal level, the Court of Second Instance. No marriage is actually declared null in the Church until there are two affirmative decisions (involving at least 4 judges, 1-3 at the Court of First Instance and 3-5 at the Court of Second Instance). Three separate actions can be taken on the appellate level:
 - a) There is a mandatory review (technically different than an appeal) of a First Instance affirmative decision, which takes one to two months. The Court of Second Instance is able either to ratify the decision without delay or admit the case to the ordinary appeal process.
 - b) There may be a complaint by a party over the procedural correctness of the case. It may take 2-3 months to address this complaint.
 - c) Either party (or the defender of the bond) may formally appeal a decision with which they disagree. Formal appeals can last six months.
 - 2) If the sentence of the First Instance Court is confirmed by the judges of the Second Instance Court, then the decision is usually final.
 - 3) The decision itself, when it is in the affirmative, is a matter of the public record and is noted in the baptismal and marriage registers of the Church. Otherwise the entire proceedings are confidential.
 - a) Trials in Church law are not public events. Individuals have a right to their privacy and good reputation and hence the proceedings are not open to public view and scrutiny.
 - b) A case concerning marital nullity affects a person's public status in the Church, that is, whether one is validly married or single. This is a matter of record; it is not a secret. So from the perspective of common sense, marriage cases are governed by strict confidentiality, not secrecy. The distinction is important because it affects a person's reputation. The Church may make a public statement that a declaration of nullity was granted, but it will never state on what grounds it was granted or provided any other information about the tribunal proceedings.
 - c) Marriage cases are often concerned with delicate matters. Such matters can cause public scandal and ruin someone's reputation if they become public. Court officials are obliged by their office and oaths to observe the laws of confidentiality and secrecy. For instance, judges are to maintain permanent secrecy concerning their discussions of a case. Again, this is to prevent any harm or damage on a person's reputation from the disclosure of such discussions.
 - d) Furthermore, if a judge is concerned that someone involved in the case who is not a court official may possibly leak information to others, the judge may insist that that person swear an oath of secrecy. This includes the petitioner, respondent, witnesses and experts. The oath of secrecy is to be administered if the judge has any reason to fear that the person will reveal any information that would harm the reputation of others, give rise to quarrels, cause scandal or have any similar untoward consequence. Any person who violates the oath of secrecy may be punished for that offense.
- g) Fees associated with the processing of a case.
- 1) The universal law of the Church has one canon that deals with judicial expenses as well as the issue of free legal aid. A determination regarding actual expenditures is left to the bishop, since he is ultimately responsible for the workings of his tribunal. The bishop, in consultation with his judicial vicar, decides on reasonable fees that are to be paid by the petitioner and the respondent for the court's services.

Canon 1649: §1. The bishop whose responsibility it is to supervise the tribunal, is to determine norms regarding: (1) the parties to be liable for paying or compensating for judicial expenses; (2) the honoraria for procurators, advocates, experts and interpreters and the indemnification of witnesses; (3) the granting of gratuitous legal assistance or a diminution of expenses; (4) the recovery of damages which are owed by the one who not only lost the case but also engaged in litigation rashly; (5) the depositing of money or the guarantees to be made concerning the expenses to be paid and the damages to be recovered. §2. From a pronouncement relating to expenses, honoraria and recovery of damages, there is no separate appeal; but the party can have recourse within fifteen days to the same judge who can adjust the assessment.

- 2) These assessed costs are not donations to the Church. Rather they are fees for services rendered. Processing any court case requires money for photocopies, lights, overhead, not to mention salaries of secretarial personnel and others. In most dioceses there are varying fees for differing types of cases. In some dioceses there are no fees associated with the tribunal process and the diocese picks up all costs.
- 3) Parties may also be assessed fees for the services of court advocates, procurators, interpreters and experts. This will differ from tribunal to tribunal. Most of the time they are included in the general assessment. An exception to this policy may be the fee associated with experts in the mental health professions, such as psychiatrists, psychologists and clinical social workers. These individuals' fees are usually in addition to the general assessment.
- 4) Tribunals also have guidelines for free legal aid and the reduction of fees. There are instances in which the parties cannot assume the nominal costs associated with a case; this does not affect the investigation. In cases of financial need the fee may be waived. Or, furthermore, if there is a need to pay in installments, the person should be accommodated. These accommodations are made to the party by the judge.
- 5) It is important to note that the assessment of fees normally reflects only a part of the actual court expenditures! The moneys support the overall operation of the tribunal, such as salaries for professional and support staffs, computer hardware and software, office supplies, postage, building expenses and the like. Actually, in the tribunals receiving assessments, such income only covers a percentage of the actual case costs. The dioceses assume the rest of the cost. No tribunal supplies for its annual operating expenses solely through the assessment of fees.

VI. Other commonly-asked questions surrounding marriage, divorce, remarriage and annulments

A) In the Church's eyes, under what circumstances is it all right to separate?

2) Spouses have the duty and the right to preserve conjugal living unless a legitimate cause excuses them (canon 1151).

- a) The Church, hence, recognizes that there are reasons why couples would have to separate, especially in those cases when there is spousal and filial abuse in the house, or other very serious reasons.

Canon 1153: §1. If either of the spouses causes serious danger of spirit or body to the other spouse or to the children, or otherwise renders common life too hard, that spouse gives the other a legitimate cause for separating in virtue of a decree of the local ordinary, or even on his or her own authority if there is danger in delay. §2. In all cases, when the reason for the separation ceases to exist, conjugal living is to be restored unless ecclesiastical authority decides otherwise.

- b) The Church addresses the case of spousal adultery directly in canon law. The Church earnestly encourages the non-adulterous spouse to pardon the partner and not break-up conjugal life for the good of the family and out of Christian charity, but this is not a duty:

Canon 1152: §1. Although it is earnestly recommended that a spouse, moved by Christian charity and a concern for the good of the family, not refuse pardon to an adulterous partner and not break up conjugal life, nevertheless, if the spouse has not expressly or tacitly condoned the misdeed of the other spouse, the former does have the right to sever conjugal living, unless he or she consented to the adultery, gave cause for it, or likewise committed adultery. §2. Tacit condonation exists if the innocent spouse, after having become aware of the adultery, continued voluntarily to live with the other spouse in marital affection. Tacit condonation is presumed if the innocent spouse continued conjugal living for a period of six months and has not had recourse to ecclesiastical or civil authority. §3. If the innocent spouse spontaneously severed conjugal living, that spouse within six months is to bring a suit for separation before the competent ecclesiastical authority; this authority, after having investigated all the circumstances, is to decide whether the innocent spouse can be induced to forgive the misdeed and not to prolong the separation permanently.

Canon 1155: The innocent spouse can laudably readmit the other spouse to conjugal life, in which case the former renounces the right to separate.

c) The Church insists that children be taken care of:

Canon 1154: After the separation of the spouses, suitable provision is to be made for the adequate support and education of the children.

B) Are children conceived in a marriage that is eventually declared null illegitimate?

- 1) The simple answer to this commonly-asked question is NO!
- 2) A judicial sentence that declares the nullity of a marriage does not affect the legitimacy of children born of that union. The laws of the Catholic Church clearly state that children of a putative marriage (one that has been declared null from the beginning) are legitimate:

Canon 1137: Children conceived or born of a valid or putative marriage are legitimate.

- 3) In a putative marriage, children are born to parents who are presumed at the time to be validly married. The paternity and maternity of the child is clear and legal. A later determination that there was no valid marriage bond does not negate their legitimacy in civil law — because their putative marriage was recognized as a true marriage in the eyes of the civil law — nor in Church law, which expressly states that children born of a putative marriage are legitimate.
- 4) Legitimacy disputes arose historically in order to promote marriage and the right of every child to be conceived and born from a loving marriage and to protect inheritance rights at a time when it was almost impossible to prove paternity (through diagnostic blood tests, or now DNA screening). If there were not laws for legitimacy, every pregnant unwed mother in England could try to claim her child is the son or daughter of the Crown prince and therefore entitled to all of the rights of such an heir.
- 5) Today, however, there is no legal advantage to legitimacy over illegitimacy in canon law and, as far as I'm aware, in normal circumstances, in civil law as well (because paternity and consequent rights/duties can be proven).
- 6) Moreover, a continual focus on legitimacy, and that illegitimate children are somehow less worthy of human dignity and respect, has provided the circumstances for the advent of an abortion culture. Children have a right to be born from a loving marriage, but when they're not, they (and their mothers and fathers) should not be castigated or spurned to the extent that people would want to kill them to avoid the stigma; rather, they should be welcomed. We can hate the sinner, but we should ALWAYS love the sinner and particularly the child who, by no fault of his or her own, was conceived as a result of a sin!

C) Does the Church care at all about the children of a marriage that is declared null?

- 1) Yes, very much! The Church is very concerned for the welfare of the children of divorce. The Church insists that parents do all in their power to provide for the physical, social, cultural, moral and religious upbringing of their children.

Canon 1136: Parents have the most serious duty and the primary right to do all in their power to see to the physical, social, cultural, moral and religious upbringing of their children.

- 2) Judges admonish parents to fulfill both their civil and ecclesial obligations to children when a declaration of nullity is granted. Parents must also verify that their obligations to children are met before they remarry in the Church.

Canon 1071 §1. Except in case of necessity, no one is to assist at the following marriages without the permission of the local ordinary: ... (3) a marriage of a person who is bound by natural obligations toward another party or toward children, arising from a prior union;

Canon 1689: In the sentence the parties are to be advised of the moral and even civil obligations which they may have to each other and to their children as regards the support and education of the latter.

D) Can a divorced Catholic receive Communion?

- 1) Provided that the divorced Catholic is in the state of grace (not aware of any unconfessed mortal sin) or is living in an objectively irregular situation (with a boyfriend or girlfriend), this Catholic may receive Holy Communion.
- 2) Provided that the divorced Catholic did not divorce out of a belief that marriage is dissoluble, but rather for pressing reasons (like those given above for separation), and provided that the person is living the Catholic faith, there is, moreover, nothing preventing this Catholic from becoming a lector, Eucharistic minister, or holding any position or service in the Church that is open to him or her.

- 3) To summarize: to get divorced for a morally appropriate reason is not a sin. In fact, in some cases, it might be the morally appropriate thing to do, to protect oneself and the children born of the marriage. Provided that the civilly-divorced Catholic still lives morally — in the absence of a declaration of nullity, not behaving as a single person, but as a separated spouse with a civil divorce — this person has the same standing as any Catholic in good standing in the Church.
- 4) One of the historical reasons for confusion here might trace itself to the Third Plenary Council of Baltimore, which the US Bishops held in 1884. They declared that Catholics who divorced and remarried were excommunicated, and hence incapable of receiving the sacraments except in danger of death or by removing the cause for the excommunication. But this always concerned divorced and remarried Catholics, not those civilly-divorced Catholics who lived a chaste separation still considering themselves married in the eyes of God and the Church.

E) Can a divorced-and-remarried Catholic receive Communion?

- 1) Basically, no, except in the limited circumstances when the “spouses” live as brother and sister, as we will discuss below.
- 2) Following the explicit words of Jesus our Savior, the Church considers such “remarriages” adulterous unions that clearly contravene God’s law. Hence they cannot receive Communion as long as the situation persists. True forgiveness of their sins of adultery can only take place, as well, when they are committed to living in complete continence.

CCC 1650 Today there are numerous Catholics in many countries who have recourse to civil divorce and contract new civil unions. In fidelity to the words of Jesus Christ - "Whoever divorces his wife and marries another, commits adultery against her; and if she divorces her husband and marries another, she commits adultery, the Church maintains that a new union cannot be recognized as valid, if the first marriage was. If the divorced are remarried civilly, they find themselves in a situation that objectively contravenes God's law. Consequently, they cannot receive Eucharistic communion as long as this situation persists. For the same reason, they cannot exercise certain ecclesial responsibilities. Reconciliation through the sacrament of Penance can be granted only to those who have repented for having violated the sign of the covenant and of fidelity to Christ, and who are committed to living in complete continence.

FC 84: Reconciliation in the sacrament of penance, which would open the way to the Eucharist, can only be granted to those who, repenting of having broken the sign of the covenant and of fidelity to Christ, are sincerely ready to undertake a way of life that is no longer in contradiction to the indissolubility of marriage.

- 3) The Church recognizes that sometimes couples in this divorced-and-remarried situation do want to keep the faith and raise their children in a Christian manner. Occasionally, sometimes parents “remarry” in order to make sure children are taken care of after their true spouses abandon them. The Church encourages those in this situation to consider themselves as still a member of the Church through baptism and specifically to avail themselves of prayer, acts of charity and acts of faith — but she cannot allow them to receive communion except in a relationship of complete continence. The Church still loves them, in imitation of God.

CCC 1651 Toward Christians who live in this situation, and who often keep the faith and desire to bring up their children in a Christian manner, priests and the whole community must manifest an attentive solicitude, so that they do not consider themselves separated from the Church, in whose life they can and must participate as baptized persons: They should be encouraged to listen to the Word of God, to attend the Sacrifice of the Mass, to persevere in prayer, to contribute to works of charity and to community efforts for justice, to bring up their children in the Christian faith, to cultivate the spirit and practice of penance and thus implore, day by day, God's grace.

- 4) The reason for the Church’s exclusion of divorced-and-remarried Catholics from Holy Communion is because their condition of life objectively contradicts that one-flesh union and love between Christ and the Church which is signified and brought about by the Eucharist and because their situation is objectively scandalous. Pope John Paul II writes about this in *Familiaris Consortio*, 84:

However, the church reaffirms her practice, which is based upon sacred scripture, of not admitting to Eucharistic communion divorced persons who have remarried. They are unable to be admitted thereto from the fact that their state and condition of life objectively contradict that union of love between Christ and the church which is signified and effected by the Eucharist. Besides this there is another special pastoral reason: If these people were admitted to the Eucharist the faithful would be led into error and confusion regarding the church's teaching about the indissolubility of marriage.

- 5) What is a “remarried” couple to do, if they cannot separate? John Paul II says in FC 84:

When, for serious reasons such as, for example, the children's upbringing, a man and a woman cannot satisfy the obligation to separate, they [must] "take on themselves the duty to live in complete continence, that is, by abstinence from the acts proper to married couples."

- 6) Can a priest in the confessional give a person in such a situation permission to receive Holy Communion?

a) Some bishops in Germany tried to promote an “internal forum” (confessional) solution to problems like this; that a priest in the sacrament of reconciliation could give someone living in this situation the permission to receive Holy Communion.

- b) Pope John Paul II responded clearly to proposals like this saying that, unless a couple chooses to live completely as brother and sister, no priest can validly give permission for anyone to go to Communion under these circumstances, or even give absolution in the sacrament of confession.
- c) This is not to be “harsh” or “insensitive” to people in these situations, but one of the requirements for someone to go to confession validly is a sincere purpose of amendment, which means that one will do what is objectively possible to stop committing the same sins. If one does not have that intention, even if the priest were to say the words of absolution, the sins would not be forgiven.

FC 84: By acting in this way the church professes her own fidelity to Christ and to his truth. At the same time she shows motherly concern for these children of hers, especially those who, through no fault of their own, have been abandoned by their legitimate partner.

- 7) In direct response to a question that was submitted: Can a divorced and remarried Catholic become a Eucharistic minister or a lector?
 - a) Basically the clear answer to this is NO — certainly to being a Eucharistic minister — on the basis of the reasons given above. In terms of being a lector, no one has a right to be a lector and those asked by a pastor should be people of good reputation who would not be potential scandals to the faithful.
 - b) The only possible exception to this would be for those who are living in a relationship of brother and sister. But, in order for this person not be a potential stumbling block for the faith of others, that this person is living in complete continence with his or her “spouse” should be publicly known. Even so, the person is living in an objectively irregular state.
- F) When it comes to an affirmative decision to a petition for nullity, isn’t it true that in only matters who you are and who you know?
 - 1) Such a cynical statement is rather common. The simple answer to it is NO, the process has nothing to do with who one is or whom one knows.
 - 2) The name or position of the petitioner, respondent or any witness does not matter. Everyone is treated with the same procedural rights in law. No one is penalized for being well known. No one is penalized for being unknown. Everyone is treated fairly and in accord with the norm of law.
 - 3) In fact, no officer of the court is permitted to take part in a case in which there is a family relationship, close friendship, animosity or the desire to profit or avoid a loss. This law exists to protect the integrity of the process and to avoid any suggestion of collusion.
- G) Why should a person who couldn’t validly enter marriage the first time — say, because he went into marriage intending to beat his wife and hence didn’t consent to the “good of the spouses” — get a second chance? Is there anything that the Church can do to put restrictions on such a person from hurting someone else in the future?
 - 1) Some astute questioners have asked this. If someone was found incapable previously of validly entering marriage, what is to say that he or she is capable in the future, particularly when it involves a psychological problem?
 - 2) The Church tribunals can and often do put restrictions — called *vetita* in Latin — on one or both of the parties from marrying again when there is serious reason.
 - a) A tribunal investigation may surface patterns of physical, sexual, chemical or emotional abuse. Patterns of self-destructive behavior may also be evident. Individuals may suffer from untreated, though diagnosed, psychological illnesses. These instances, and others, may warrant the imposition of a restriction regarding a future marriage until the issues are satisfactorily addressed.
 - b) The good of the individual, future spouse and children, and the sanctity of the sacrament demand this cautionary tool.

Canon 223: §1. In exercising their rights the Christian faithful, both as individuals and when gathered in associations, must take account of the common good of the Church and of the rights of others as well as their own duties toward others. §2. In the interest of the common good, ecclesiastical authority has competence to regulate the exercise of the rights which belong to the Christian faithful.

Canon 1684: §1. After the sentence which first declared the nullity of marriage has been confirmed at the appellate level either by decree or by another sentence, those persons whose marriage was declared null can contract new marriages immediately after the decree or the second sentence has been made known to them unless a prohibition is attached to this sentence or decree, or it is prohibited by a determination of the local ordinary.

Canon 1685: Immediately after the sentence has been executed, the judicial vicar must notify the ordinary of the place in which the marriage was celebrated about this. He must take care that notation be made quickly in the matrimonial and baptismal registers concerning the nullity of the marriage and any prohibitions which may have been determined.

H) How can a marriage that has lasted 35-40 years, with 8-10 kids, be declared null?

- 1) On the basis of a recent book, many have asked this question.
- 2) The answer is that if there were never any marriage in the first place, because the consent was defective, or not legitimately manifested, or given by people not qualified under law, then the marriage never existed. The length of time a couple spent together after the wedding day is irrelevant to this determination.
- 3) Take the case of a priest, for example, who soon after his ordination leaves the priesthood. He is not qualified to marry because of his previous promise of perpetual celibacy. Imagine he forges a baptismal certificate, moves out of state and marries a woman who is unaware of this in a Catholic Church. Imagine, after his 50th anniversary, his wife finds out that he was (is!) a Catholic priest and applies for a declaration of nullity on the basis (1) of deception and (2) his impediment. Such an annulment could be granted. We can also imagine a case of two adopted children who grow up in different homes — it has happened! — who marry, have a relatively happy life together, several children, but then discover that they are blood brother and blood sister. Their marriage would be declared null on the basis of consanguinity.
- 4) To take a harder case: what about a woman who was married for 35 years, renewed marriage vows twice with her husband, who then runs off with a younger man, civilly divorces her husband, and then applies for a declaration of nullity so that she can marry that younger man in the Church and still go to the sacraments?
 - a) First, the renewal of marriage vows does not matter. The focus of a declaration of nullity is what was going on at the time of the wedding. If there were no marriage bond, you cannot renew it (it would be like renewing a subscription to a magazine that you never had a subscription to in the first place).
 - b) Such a case would be much harder to prove in court, particularly if it were on a nebulous claim of defective consent, because:
 - 1) Several of the witnesses would probably be dead or unable to be found and those who were still alive and able to be found may have difficulty remembering the details of those days. If there memories were “too good,” a judge would be able to see through this readily.
 - 2) Moreover, institutionally the deck is stacked against any petition for nullity. Not only is there a presumption in favor of the marriage bond, but it’s basically two-against-one in front of the judge: the advocate-procurator for the petitioner versus the advocate-procurator of the opposed respondent and versus the defender of the bond.
 - 3) Furthermore, every declaration of nullity must be looked at by at least 4 judges (at least one at the Court of First Instance and at least 3 at the court of second instance).
 - 4) Therefore, if there is a declaration of nullity in a case such as this, people can be pretty confident that the case was extraordinarily strong and the claim well-proven.