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DIOCESE OF TYLER

# Tribunal Newsletter

## Formal Process for Marriage Nullity Cases

By: Very Rev. Lawrence Rasaian, JCD

**T**he Judicial Vicar, together with the tribunal staff, sends you all prayerful wishes on the Feast of St. Joseph. We discuss in this issue the use of the formal process for marriage nullity cases due to defective consent. Professor Francis G. Morrissey, OMI, Saint Paul University, Canada, has written an article on the “Formal Process for Marriage Nullity Cases.” He explains beautifully the use of the formal process for a marriage nullity case due to defective consent based on a biblical principle, “State your case and bring your proofs and let them take counsel together” (Isaiah 45: 21). He highlights further that the primary focus in church court is on “the truth,” rather than justice. Its primary focus is on the validity or not of the sacrament of the marriage, and the procedures are designed to enable those involved to recognize the truth of their situation.

**P**rofessor John A. Renken, Dean, Faculty of Canon Law, Saint Paul University, Canada, has written two articles on the “Nullity of Marriage Due to Defective Consent,” and on the “Process of Declaring the Nullity of Marriage Due to Defective Consent.” The first article explains clearly that the formal process is specifically used for marriage nullity cases due to defective consent. “Consent makes the marriage.” If one’s consent to marriage is invalid, the marriage itself is invalid. He gives an overview of the “grounds of nullity” of marriage consent. The second article makes it clear that the tribunal process does not make the consent or marriage invalid. Instead, after its study of the broken marriage, the tribunal declares that this union was never a valid marriage since the consent of at least one party was defective consent.

**A** marriage may be invalid for three primary reasons: defective Catholic form, a diriment impediment, or defective consent. In the previous newsletter we had discussed the use of the documentary process for cases concerning either defective Catholic form or existence of impediments for a valid marriage celebration. This issue brings out the use of the formal process for cases concerning defective consent. The formal process is in fact applied for the majority of the cases coming to the tribunal. Anyone baptized or not, who was a party to a marriage may petition to the tribunal for a declaration of invalidity of his/her prior marriage if he/she wishes to remarry in the Catholic Church. Marriage nullity cases are handled as contentious processes, even if both parties want the declaration of invalidity. Our tribunal will be competent to accept and assist with the case if the marriage took place in the territory of our diocese, if either or both parties have a domicile (with the intention to remain here permanently or completed five years) or a quasi-domicile (with the intention to remain here for three months or completed three months) in the territory of our diocese, or if the most of proofs can be collected from any location of our diocese.

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# Nullity of Marriage Due to Defective Consent

By: Monsignor John A. Renken

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## The Church's Understanding of All Marriages

Marriage is understood as a partnership of the whole of life between a man and a woman which is ordered to the good of the spouses, and to the procreation and education of children. This partnership is indissoluble and excludes infidelity. This is the Church's view of *every* marriage, even if neither party is a Catholic or even a Christian. The Church believes this view is rooted in the very natural order of creation.

Moreover, if both parties in the marriage are baptized Christians, their marriage is "sacramental" since every marriage of two baptized Christians (Catholic or not) is a sacrament.

## The Nullity of Marriage

A marriage is valid (1) if each party gives valid *consent*, (2) if each party is free from all *impediments* to marriage, and (3) for any marriage involving at least one Catholic, if the *Catholic form* for the celebration of marriage is observed (i.e., the marriage must be celebrated in the presence of an authorized cleric and two witnesses; this required "Catholic form" is dispensed by the local ordinary on an *ad hoc* basis).

### *A marriage is valid*

- 1. If each party gives valid consent,*
- 2. If each party is free from all impediments to marriage,*
- 3. For any marriage involving at least one Catholic, if the Catholic form for the celebration of marriage is observed ...*

If any of these factors is lacking (valid consent, freedom from impediments, observance of the required form for Catholics), the marriage is invalid. It can be declared "null" by the Church.

## Invalidity of a Marriage Due to Defective Consent

It is a firm and constant principle: "Consent makes marriage." This consent is "personal" (i.e., it cannot be offered by someone other than the bride and the groom). This consent is an "act of the will" (i.e., it is a free and deliberate choice) by a person who has a proper understanding (i.e., knowledge) of the true nature of marriage. Further, each party must have the psychological maturity and inner freedom to express their consent after an adequate process of reflection;

and, each party must also have the psychological capacity to take on the life-long obligations of marriage.

## Grounds for the Nullity of Consent

On the part of both the man and the woman, consent is a personal (1) act of the will by a person with (2) the proper understanding of marriage, and which is expressed by a person with the (3) psychological capacity to discern marriage and (4) the psychological capacity to live out a life-long interpersonal marriage. The Church holds that this pertains to *every* marriage in the world. It follows, of course, that if something in a party's consent is lacking, the party's consent is *invalid*. And, since consent makes marriage, if consent is defective, the marriage is also *invalid*.

Over the centuries, the Church has identified several "grounds of nullity" of marriage consent. Below is a *very elementary* explanation of *some* of the *most common* grounds of nullity. Those wishing more information are invited to contact the local tribunal or parish.

**Nullity due to "defects of the will"** (i.e., not really wanting marriage)

1. *Simulation*: this happens when a person claims to want to enter a marriage, but excludes marriage entirely, or excludes some essential element (openness to offspring, intention of spousal good) or some essential property (indissolubility or fidelity).

2. *Conditional consent*: this happens when a person wants the existence of the marriage to depend on the existence of something else, such that, if the other thing does not exist, then there is no marriage.

3. *Force and fear*: this happens when a person enters marriage, despite an aversion to doing so, due to internal fear caused by external force/pressure. This commonly happens when a couple marry only due to parental pressure because of premarital pregnancy.

**Nullity due to "defects of the intellect"** (e.g., a serious misunderstanding of marriage)

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1. *Error about a quality of the intended partner:* this happens when a person so intends a quality in the intended spouse that, if the quality is absent, the person does not want the marriage. Sometimes, this error is “imposed” by the intended partner (or even a third party) in order to manipulate the consent of the person in error.

2. *Error about something essential to marriage:* this happens when a person enters marriage while consciously holding to an error about marriage’s indissolubility, or the required fidelity, or its sacramental character (between the baptized). The person with this error consciously chooses marriage precisely as he or she erroneously understands it.

### **Nullity due to “psychological incapacity”**

1. *Incapacity to discern adequately the choice to marry for causes of a psychic nature:* this happens when a person lacks the peace of mind, internal freedom, maturity, etc. to make the marital choice with the appropriate balance, calm, and reflection proportionate to a life-long union.

2. *Incapacity to take on the essential obligations of marriage for causes of a psychic nature:* this happens when a person suffers some grave psychological condition or disorder which eliminates the person’s ability to live out marriage.

### **Important Note**

The above presentation is a very simple overview intending to identify the basics of what is required for valid matrimonial consent. If someone believes that his or her marriage is invalid due to some defect of consent, he or she is invited to approach the diocesan tribunal which will provide more information, and which will explain the Church’s process to study the consent of the parties in a marriage which has ended in civil divorce.

## **Administrator’s Corner**

The first consideration for submitting a formal case petition to the tribunal is jurisdiction; is the tribunal competent to process the case? A petitioner or respondent must have a connection to a particular diocese by domicile, or quasi-domicile; where the marriage was celebrated; or where most proofs can be collected.

A petitioner must answer the questionnaire as thoroughly as possible and submit complete contact information for the former spouse and witnesses who have agreed to cooperate. A copy of the marriage license and divorce decree should be enclosed. The tribunal will assist in obtaining Catholic baptismal certificates and prenuptial marriage preparation packets when necessary.

– Margaret Oppenheimer

*Email canonical questions to the Tribunal Office at: [mtiscareno@dioceseoftyler.org](mailto:mtiscareno@dioceseoftyler.org); the response from the Judicial Vicar will be published in future issues of the newsletter.*

## **Did You Know?**

*Lack of quality witness testimony may be the most common problem the tribunal encounters in processing a formal case petition. As in civil law, anyone alleging a former marriage is invalid bears the burden of providing the evidence to clearly establish proof, normally through personal testimony and testimony of knowledgeable witnesses. Witnesses are vital to this process, as a former spouse may refuse to participate, or give conflicting testimony.*

*The tribunal must have adequate testimony to determine if grounds for invalidity are evident at the time of consent, and if the marriage did not meet the canonical requirements for a binding union. Other proofs may include medical, psychological, or criminal records/police reports.*

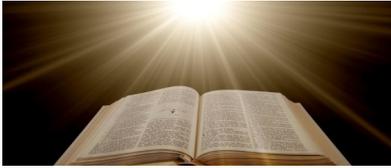
– Margaret Oppenheimer



# Formal Process for Marriage Nullity Cases

By: Professor Francis G. Morrissey, OMI - St. Paul University, Ottawa, ON, Canada

The formal process that is used presently in marriage tribunals around the world for most of the cases that are presented to them has a long and evolving history.



Its basic elements can be traced back to the Old Testament times. We read in Isaiah, 45:21: “State your case and bring your proofs. Let them take counsel together.”

There are three elements involved here: (1) what is the case?; (2) how can I prove it?; (3) how can we evaluate what was presented?

In the early Church, we did not have elaborate procedures in place. The classic episode of Ananias and Sapphira in the Acts of the Apostles (Acts 5:1-11) shows how the couple were asked to tell the truth; they lied; they died on the spot. The key point here is that they were given the right to defend themselves.

Later on, arrangements were made to have certain persons designated as judges, and their areas of competence were determined. Then later, proofs by oaths (invocation of the Divine Name were introduced).

A major turning point occurred in 1741 when Pope Benedict XIV reorganized the entire procedure, and introduced a new person into the process: the defender of the bond (often called “the devil’s advocate” in popular speech). The defender’s role was to uphold the truth and present reasonable argu-

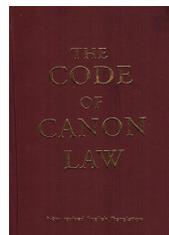
ments in favor of the validity of the marriage.

There were additional changes made in the procedure through the last three centuries. The most recent revision took place in 2015, under Pope Francis. He ordered a simplification of the entire procedure in order to make it easier for people to come to the tribunal and to have their cases heard. Tribunals are now using the renewed procedures and these have proved helpful to many people.

As it stands now, each diocese has its own tribunal, or it shares ser-



vice with another diocese. Personnel are appointed (judges, notaries, defender of the bond, and so forth). A person who wishes to have a case heard presents it to the tribunal. Usually, that person is assisted in the preparation of the request. This corresponds to the first phase: “state your case” (Isaiah).



If the Church court is of the opinion that the case as presented merits consideration, the other party to the marriage is notified and given an opportunity to present the other side of the story.

The judge will determine the grounds upon which the case is to be heard. As the Church became more and more comfortable with the contribution of the

human sciences, new possible grounds were added to the list of acceptable grounds. For instance, in 1983, Pope John Paul II added various types of psychological incapacity (such as immaturity). In the course of the proceedings, the grounds can be changed if new evidence comes to light indicating other factors that were unrecognized at the time the case was first presented.

Once the grounds have been determined, the parties then “present their proofs”, by naming witnesses, presenting relevant documents, and so forth. If witnesses live at a distance, the tribunal of the place where they reside can be asked to assist, so that they are not unduly inconvenienced. In many cases, proof is provided by psychological experts, or other qualified persons, who have studied the evidence and can indicate any underlying factors that might have contributed to the nullity of the marriage.

Since, in a manner that is somewhat different from the practice of the secular courts, the primary focus in church courts is on “the truth,” rather than on “justice,” evidence can be presented that might not be acceptable in other legal systems. The church courts do not have a system of cross-examination.

Once the proofs have all been gathered, the defender of the bond and the advocate for the party or parties examine the material that has been gathered and present arguments. This is the third phase of Isaiah’s recommendation: “take counsel together.”

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# Process for Declaring the Nullity of Marriage Due to Defective Consent

By: Monsignor John A. Renken

Dean, Faculty of Canon Law - St. Paul University, Ottawa, ON, Canada

## Consent Makes Marriage



It is a firm and constant truth: “Consent makes marriage.” This principle reflects the personal nature of matrimonial consent, and is rooted in ancient Roman law. The principle is so important that the Church contends that, if one’s consent to marriage is invalid, the marriage itself is invalid.

Over the centuries, the Church has articulated several factors which make a person’s matrimonial consent invalid. From the viewpoint of the Church, these factors pertain to every marriage, even if neither partner is Catholic or Christian.

The Church has developed a process to study a marriage which has ended in civil divorce in order to determine whether or not that marriage was invalid from its beginning due to the defective consent of a party. This study takes place in the “tribunal” of the diocese.

The common good (and “common sense”) require that we should presume the validity of a person’s marriage consent (and, consequently, the validity of marriage). The tribunal studies a “broken marriage” (i.e., one which has ended in civil divorce) to discover if its validity (which the law presumes) never existed. In other words, if there is sufficient proof of the invalidity of consent, the tribunal issues a judgment which overturns the legal presumption of the marriage’s validity and which declares the nullity of that mar-

riage.

It is most important to understand: the tribunal process does not make the consent invalid, nor does it make the marriage invalid. Instead, after its study of a broken marriage, the tribunal may declare that this union was never a marriage since the consent (of at least one party) was defective consent. This marriage is invalid because at least one party’s consent was invalid.

Therefore, it is proper to say that the tribunal issues a declaration of nullity (meaning that the tribunal declares that the marriage was null from its beginning because of defective consent). It is not precise to speak of an annulment (which can give the mistaken impression that the tribunal itself nullifies the marriage).

## The Tribunal



The law of the Church requires that every diocese have a tribunal. If this is not possible for a given diocese, then the diocesan bishop must arrange for his faithful to have access to the services of a nearby tribunal outside his diocese. Everyone has the right to receive the services of a tribunal.

The tribunal exists to resolve disputed or unclear issues. When studying a broken marriage, the tribunal investigates whether a given marriage (which is legally

presumed to be valid) is in fact invalid (due to the inadequate consent of at least one party).

The staff of every tribunal must include persons (men or women) who have a graduate degree in canon law that provides them with the competence to study the consent of the parties of a broken marriage in accordance with the longstanding tradition and jurisprudence of the Church. The study of every broken marriage involves a canon lawyer called the “defender of the bond” (whose role is to point out truthful and reasonable factors favoring the validity of the consent). This study also involves three other canon lawyers called the “judges” (who make the decision whether or not the investigation reveals the invalidity of consent). By exception, due to a shortage of personnel, this decision can be made by one “judge” who must have the assistance of two “assessors” who have solid formation in marriage jurisprudence.

## The Tribunal Process



The process of investigating a broken marriage begins when either partner (or both partners together) approach the tribunal with a “petition” to study the marriage. One of the judges studies the petition and, if it appears to have some basis, the judge accepts the case and the investigation process begins.

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Then, once the arguments have been presented, the case goes to the judge or judges for decision. The parties are advised of the outcome.

If one or other is not satisfied, there is a right of appeal to a second court, and even, in some cases, to a third court (usually in Rome).

When the time for appeals has elapsed, the parties are free to remarry in the Church, unless a prohibition was placed on either or both parties because of underlying psychological issues that have not been addressed.

The procedure is a means to an end, and, for this reason, it is not surprising to see that the rules governing a trial have varied and will continue to do so in years ahead. The primary focus is on the validity or not of the Sacrament of Marriage, and the procedures are designed to enable those involved to recognize the truth of their situation.

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Both parties are informed of the judge's acceptance of the petition, and each is invited to take part in the process. (If the non-petitioning party refuses to take part, the process continues nonetheless). Both parties are offered the services of an "advocate" who "represents" them during the process. The advocates also have significant formation in marriage jurisprudence.

Since the common good (and common sense) presume the validity of every marriage until the contrary is proven, the purpose of the tribunal's process is to determine if this presumption is to be overturned – that is, to determine if this marriage was in fact not a valid marriage (which judgment overturns the presumption of validity) because of defective consent. The process requires "proofs" to overturn the presumption of validity. There are many kinds of proofs: the declarations of the parties (the most important proofs), the testimony of witnesses, documents, analysis by (psychological) experts, etc. The tribunal staff gathers these proofs at the direction of the judges.

Once the proofs are gathered, both parties have the right to see the proofs and to make observations, personally or through their advocates. Thereafter, the defender of the bond offers remarks, and then the case is presented to the judges who decide if the broken marriage had been a valid marriage. This decision about the validity of the marriage is rooted in the judgment about the validity of the party(ies) consent: if one's consent was invalid at the wedding, the marriage has always been invalid.

An "affirmative" decision means "YES, the invalidity of the consent has been proven through the tribunal process, and now the Church sees this as an invalid marriage." A "negative" decision means "NO, the invalidity of the consent has not been proven by this tribunal process, so the Church continues to presume the validity of this marriage."

After the diocesan tribunal gives its decision, both parties have the right to "appeal" the decision to the appellate tribunal which may (or may not) accept the appeal. This appeal is not mandatory any longer (but appeal had been mandatory for very decision prior to the reforms of the marriage procedures enacted by Pope Francis in 2015).

If there is no appeal, following an "affirmative" decision, both parties are free to enter new marriages, since the "affirmative" decision means that the prior union had never been a valid marriage (due to the defective consent of at least one of the partners). Sometimes, though, following an affirmative decision, before a person enters a subsequent marriage, the Church requires him or her to take part in some pastoral counseling in order to address appropriately the factors which caused the invalidity of the broken marriage. The Church wants to assist the party, to ensure that a future marriage is not invalid for the same (unresolved) issues which caused the nullity of the first marriage.

Tribunal Update March 2019	
Formal Petitions (opened)	14
Prior Bond (Ligamen)	3
Pauline Privilege (opened)	0
Radical Sanation	3
Lack of Form	11
Appeal Cases (opened)	4

*Saint Joseph was a good man, a tireless worker, the upright guardian of those entrusted to his care. May he always guard, protect, and enlighten families. – St. John Paul II*