



Tribunal Newsletter

DIOCESE OF TYLER

Volume 1, Issue 4

CANONICAL SOLUTIONS FOR LACK OF FORM MARRIAGES By Very Reverend Lawrence Rasaan, JCD

Church law provides two methods to validate lack of canonical form marriages between two Catholics or between a Catholic and a non-Catholic or a non-baptized person. They are known as simple validation and radical sanation.

Canonical Form – Baptized Catholics are bound by canonical form for a valid celebration of marriage. Canonical form is the celebration of marriage before two witnesses and a priest or deacon who has the faculty to assist at marriages (c. 1108). The Catholic Church does not recognize either common law marriage or civil law marriage as binding for a baptized Catholic. Even if only one party is Catholic, he is bound by canonical form (c. 1059) unless prior dispensation has been granted by the local ordinary for a grave reason (c. 1127, §2). So, if the proper form is not observed for a Catholic party, the marriage is considered invalid due to lack of canonical form.

Convalidation without Process – In case of an invalid marriage due to lack of canonical form when there exists no impediment, then Church law provides the canonical solutions of simple convalidation or radical sanation. Simple validation requires the renewal of consent of the parties in the proper canonical form, while the radical sanation does not require the renewal of consent as the couple’s original consent perseveres and has never been revoked. When canonical form was totally lacking but they were free to marry, no canonical process is required. The parties may proceed with the prenuptial investigation at their parish in order to validate their marriage (cc. 1066-1067), while paper work for the grant of a sanation is submitted to the tribunal. The judicial vicar who has the delegated executive power from the bishop may grant the sanation.

Convalidation after Documentary Process – In case of an invalid marriage due to some defect in the canonical form or the existence of an impediment, if it can be proven by some documentary proofs by the tribunal that the prior marriage was invalid (c. 1688), then Church law allows either method of validation of his present marriage provided the present spouse is also free to marry in the Catholic Church.

Convalidation after Formal Process – When a party wishes to contest the validity of a prior marriage due to a defect of consent, the tribunal formal process (cc. 1679-1682) or the briefer process before the bishop (cc. 1683-1687) is required to prove the invalidity of the prior marriage in order to validate the current marriage, provided the present spouse is also free to marry in the Catholic Church.

Professor Morrisey teaches us in this newsletter how Catholics who are in lack of form marriages can make use of these two canonical means to validate their marriages if applicable. Margaret, our tribunal administrator provides some practical tips for the application of these two canonical tools to reconcile Catholics who are presently in irregular marriages and have been away from the sacraments. We hope this newsletter will enlighten and encourage Catholics living in lack of form marriages to return to the sacraments by means of these two canonical remedies.

Inside this issue:

<i>The Simple Validation A Remedy for an Invalid Marriage</i>	2
<i>A Petitioner’s Story</i>	2
<i>Did You Know...</i>	2
<i>The Radical Sanation of an Invalid Marriage</i>	3
<i>Administrator’s Corner</i>	3
<i>An Advocate’s Experience</i>	4
<i>Catholics Coming Home</i>	4
<i>Tribunal Update</i>	4
<i>Exploring the Code of Canon Law</i>	4



E-mail canonical questions to the Tribunal Office at: mtiscareno@dioceseoftyler.org; the response from the Judicial Vicar will be published in the future issues of the TNL.

For free subscription to the TNL, please send the email address of parish advisory boards, ministry heads, and any interested reader to: mtiscareno@dioceseoftyler.org.

THE SIMPLE VALIDATION A REMEDY FOR AN INVALID MARRIAGE

By Prof. Francis G. Morrissey, OMI, Saint Paul University, Ottawa, Canada



It happens relatively frequently that when a couple celebrate their wedding, there was some obstacle preventing a valid marriage. At times, the reasons for the invalidity unknown – as, for instance, if the couple thought that the priest or deacon presiding at the ceremony had the proper authorization, when he didn't; at other times, the couple know that their marriage will not be recognized by the Church, but wish to go ahead anyway with the ceremony – as, for instance, when one or both of them were in former unions that have not yet been declared invalid.

For all practical purposes, there are three reasons why a marriage can be invalid: there existed an impediment for which a dispensation had not been obtained; the

proper formalities for the celebration of the wedding had not been observed; either or both parties did not give full consent to the union.

With time, the parties want to have their situation regularized so that they can receive the Sacraments once again. The Code of Canon Law, in canons 1156-1160, provides for a method to validate a marriage. If, for instance, in the case of a Catholic couple, they did not get married before a priest or deacon and two witnesses, they can renew their consent privately before a priest (deacon) and two witnesses. We sometimes refer to this as being married “outside the Church.” From the perspective of the Church, the sacramental marriage is considered to begin as of the date of the renewal of consent.

If, because of an impediment, the marriage was invalid, the marriage can be validated once the impediment ceases. For instance, if a person were under age

at the time of the wedding, and now has the required age, the couple can renew their consent in the way mentioned above. If, in exceptional cases, the existence of the impediment cannot be proven publicly, the party who is aware of its existence can renew consent privately.

The third case is a little more complicated: lack of consent. If one of the parties has reserved consent on a given point (for instance, openness to children) and has not spoken publicly about this, it is sufficient to renew consent privately, provided the consent given by the other party persists. Otherwise, as in the previous cases, the consent must be renewed before the priest (deacon) and two witnesses.

Since it is sometimes difficult to determine whether an impediment was occult or whether the lack of consent was private, it is usually felt preferable to have a private renewal of marriage vows according to the prescribed form.

“Let the Church always be a place of mercy and hope, where everyone is welcomed, loved and forgiven.” -Pope Francis.



A PETITIONER'S STORY



The process to declare my marriage invalid was easy because the personnel in the Tribunal of the Diocese of Tyler helped me so much. The process took 2 years. For me, Yolanda, it is very important to be married by the Catholic Church and be able to receive the Body and Blood of Christ and live according to what God and the Holy Church ask us. After being civilly married to my present spouse for almost 24 years, today it is a joy for me to say that I am happily married by the Holy Catholic Church.

In my case, the help I received from my parish priest was very important to start the process. I thank Father Ariel Cortes very much for his time and assistance during the starting stage of my case.

DID YOU KNOW...

Sanations are reserved for couples in stable, long-term lack of form marriages, which they desire to 'heal from the root', back to when they originally gave consent. Sanations are not a quick fix for recently married Catholics who chose to marry at the beach or a trendy wedding venue. Those couples would require in-depth marriage preparation and an ordinary validation before a priest or deacon with faculty to assist marriages and two witnesses.



- Margaret Oppenheimer

THE RADICAL SANATION OF AN INVALID MARRIAGE

By Prof. Francis G. Morrissey, OMI, Saint Paul University, Ottawa, Canada

In the previous article, I wrote about the simple validation of an invalid marriage. In this short piece, I wish to refer to another method of fixing the situation, without having to involve the couple once again. There are two names given to this second procedure: a retroactive validation, and a radical sanation. Both refer to the same reality.

In a certain sense, we are dealing here with a fiction of law. The action of the competent church authority, either the diocesan bishop, or the Holy See, is such that the effects of the intervention refer to the moment the wedding took place, even though the decision is given some time later.

In these instances, the couple does not have to renew consent. However, before intervening, the church authority must make certain that their original consent is still there and has not been revoked. No authority can intervene to supply for consent that is lacking on the part of either or both parties.

At times, this procedure is used so as to avoid disturbing the consciences of the parties who thought that their marriage

was valid. This could be the case, for instance, if the priest (deacon) presiding at the wedding had not received the proper authorizations to witness the celebration.

There is also another reason: sometimes, in the case of two persons who got married at a time when neither of them was Catholic, one of the parties considers that they have been married since the day of the wedding and, if going through the other validation approach, does not really give consent this second time. To avoid this inconvenience, the Church can intervene to recognize the marriage as valid.

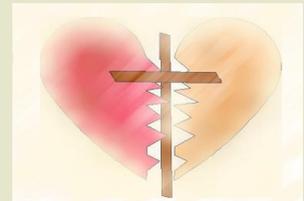
There cannot be a retroactive validation if the original impediment still exists and is one from which a dispensation cannot be obtained (a first union that has not been declared invalid, the couple are brother and sister, and so forth); nor can there be the sanation if the parties are not still consenting fully to the marriage.

The Holy See can grant retroactive validation of a marriage. Likewise, in certain cases, the diocesan bishop can do

so, provided we are not dealing with an impediment of the natural law or of divine law. Since the most common cause of invalidity is lack of proper consent, if there is no obstacle now preventing consent, the diocesan bishop can proceed.

The canons state that this procedure can be used only for a grave reason. Furthermore, since it is often carried out without the active involvement of the parties, most priests are reluctant to use it. Rather, they prefer to work steadily with the parties, leading them to recognize the cause of the invalidity, and then having them celebrate their marriage in the Lord according to the proper form.

No matter which form is used – the ordinary validation, or the sanation – both have as their purpose to enable the couple to live the Sacrament of Matrimony in the Lord and to share in the graces of the other Sacraments.



Administrator's Corner

For baptized Catholics, the proper form for marriage is in the Church with a priest or deacon who has faculty to assist marriages, and two witnesses. If a Catholic marries civilly or in another church without the required prior dispensation, the marriage is considered lack of canonical form and is not recognized in the Catholic Church. When a Catholic in this situation desires to return to the sacraments and have the marriage recognized by the Church, an ordinary or simple validation is required with renewal of consent. A non-Catholic spouse may believe they are already validly married, and may refuse to renew consent. An alternative process to an ordinary validation is a *sanatio in radice* or radical sanation, providing there are no impediments to marriage, such as a prior marriage for either party.

While an ordinary validation is handled on the parish level, a radical sanation must be presented to the Tribunal. Tyler Diocesan policy reserves sanations for couples who have been married for at least ten years. The process sometimes involves two Catholic parties. The tribunal requires the Catholic party complete a two page sanation form, which he should sign in the presence of his pastor, 1) indicating the couple's original marital consent is still valid, 2) that he intends to live his Catholic faith, and 3) pass that faith to any children. The party should include a copy of the civil marriage license and a Catholic baptismal certificate(s). The tribunal prints a decree of sanation, letters to the party and Church of Catholic baptism(s), with a copy going to the party's priest. A copy is retained at the tribunal. The marriage consent is now 'healed from the root', and recognized back to the time of the couple's original consent.

- Margaret Oppenheimer

AN ADVOCATE'S EXPERIENCE

By Deacon Larry and Patricia Edwards



Being an advocate for two and one-half years has been one of the most interesting ministries in which we have been involved. While our direct contact with the parties has been limited, those we have spoken with remind us the importance of our ministry of service. People ask questions about the process that indicate a misunderstanding of what is involved and what a declaration of nullity really entails.

Those we have had direct interaction with are very unsure of proceeding because of what they fear the process will entail. After gently discussing their individual situation, some have found it comforting that, even if the process will require filling

out the formal case questionnaire, we will be there to support, pray with them, and guide them to the conclusion. Others whose case resolution requires a declaration of "lack of form" are so relieved and thankful for our help. We find it very humbling and fulfilling that we can support these people in their search for renewal.

Seeing the expression of joy on the faces of a couple who come to me when they receive Holy Communion, together, the first time, after they have received their affirmative final decree, brings a sense of gladness to my heart and further proof of God's love for all who seek Him.

CATHOLICS COMING HOME

By Margaret Oppenheimer

We hear Catholics sometimes say they had their civil marriage "blessed" by the Church. The fact is the Church never recognized the Catholic party's civil union. The couple validates their marriage by renewing their consent as a new act of the will before a priest or deacon and two witnesses; the priest or deacon is there to receive the couple's consent, which is what establishes marriage. The Church now recognizes the marriage from that point forward, not from the time of their original civil ceremony.



Radical sanation is a process that is especially appreciated by couples who have been married for many years. One or both parties may be Catholic, and they were free to marry each other, but for some reason did not marry according to the proper Catholic form. After years of not being active in their faith, they desire to have their marriage validated and return to full participation in the sacraments. They are delighted to learn of the radical sanation option that allows their marriage to be healed back to their original marital consent, without the formality of a new marriage ceremony. They celebrate the same wedding anniversary they have always celebrated with renewed joy, and now have peace of mind in returning to the full practice of their Catholic faith.

Tribunal Update

October 2017

Formal Petitions Opened	53
Formal Petitions Completed	48
Prior Bond (Ligamen)	6
Pauline Privilege	3
Radical Sanation	11
Lack of Form	29
Appeal Cases	7

Exploring the Code of Canon Law



What is a convalidation?

A convalidation is a canonical procedure for making valid a marriage that was invalid from the beginning because of a defect of consent, a diriment impediment, or a defect of the required canonical form. The law provides two methods for validating an invalid marriage. They are known as simple convalidation and radical sanation. The former requires a renewal of consent of the parties; the latter does not require a renewal of consent. The effect of a simple convalidation is to render a marriage valid from the moment consent is renewed.



What is a radical sanation?

A radical sanation is a fiction of law by which a competent church authority renders retroactively valid a marriage which was invalid from the beginning without the renewal of consent by either party. The effect of a radical sanation is to render a marriage valid not only from the moment the sanation is granted but from the moment naturally sufficient consent was initially given. Needless to say, neither method can be applied unless any impediment has been dispensed or has ceased and any defect of consent has been overcome.

"Charity, patience and tenderness are very beautiful gifts. If you have them, you want to share them with others." - Pope Francis